
STATUTORY INSTRUMENTS

2016 No. 853

The River Humber Gas Pipeline Replacement Order 2016

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the River Humber Gas Pipeline Replacement Order 2016 and comes into force on 15th September 2016.

Interpretation

2.—(1) In this Order—

“1961 Act” means the Land Compensation Act 1961(1);

“1965 Act” means the Compulsory Purchase Act 1965(2);

“1980 Act” means the Highways Act 1980(3);

“1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

“1984 Act” means the Road Traffic Regulation Act 1984(5);

“1989 Act” means the Electricity Act 1989(6);

“1991 Act” means the New Roads and Street Works Act 1991(7);

“2003 Act” means the Communications Act 2003(8);

“2008 Act” means the Planning Act 2008;

“2009 Act” means the Marine and Coastal Access Act 2009(9);

“access and rights of way plans” means the plans certified as the access and rights of way plans by the Secretary of State for the purposes of this Order and listed in Part 3 of Schedule 2 (plans);

“address” includes any number or address used for the purposes of electronic transmission;

“AGI” means an Above Ground Installation facility for the safe operation and maintenance of a pipeline;

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by this Order that are not development within the meaning of section 32 of the 2008 Act;

(1) 1961 c.33.
(2) 1965 c.56.
(3) 1980 c.66.
(4) 1981 c.66.
(5) 1984 c.27.
(6) 1989 c.29.
(7) 1991 c.22.
(8) 2003 c.21.
(9) 2009 c.23.

“authorised development” means the development described in Part 1 of Schedule 1 and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection; “carriageway” has the same meaning as in the 1980 Act;

“cathodic protection” means a technique used to control corrosion of a metal surface by making the metal surface a cathode of an electrochemical cell;

“commence” means begin any material operation (as defined in section 155 of the 2008 Act) comprised in or carried out for the purposes of the authorised project, but does not include any remediation, environmental (including archaeological) surveys and investigation, site or soil survey, erection of site office, erection of fencing to site boundaries or marking out of site boundaries, the diversion or laying of services or environmental mitigation measures; and “commencement” must be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“drainage works” means that part of the authorised project comprised in paragraph 2(j) (further associated development) of Schedule 1 (authorised project) and such other further associated development in connection with that paragraph as is listed in paragraphs 2(a), (c), (d), (e), (f), (g), (h), (i) and (k) of that Schedule;

“drivers pack” means the collection of measures defined in the initial TMP at Paull and at Goxhill to mitigate the effects of construction traffic;

“environmental statement” means the statement certified as the environmental statement by the Secretary of State for the purposes of this Order, together with any supplemental or additional environmental statement submitted for the purposes of complying with and/or discharging the Requirements in Schedule 3 (requirements) or conditions in Schedule 9 (deemed marine licence) and listed in Part 4 of Schedule 2 (plans);

“Goxhill AGI” means the existing National Grid Gas AGI at Goxhill in North Lincolnshire as indicated on works plan 5;

“highway” has the same meaning as in the 1980 Act;

“highway authority” means North Lincolnshire Council or East Riding of Yorkshire Council as the case may be including their successors and where the relevant matter is located in the administrative areas of both then it means both;

“initial CEMP” means the construction environmental management plan certified as such by the Secretary of State for the purposes of this Order;

“initial TMP” means the traffic management plan certified as such by the Secretary of State for the purposes of this Order;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order and listed in Part 2 of Schedule 2 (plans);

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace any of the authorised project provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of “maintain” must be construed accordingly;

“National Grid Gas” means National Grid Gas Plc (company number 2006000) whose registered office is at 1 - 3 Strand, London, WC2N 5EH or any successor company performing the same functions;

“Order land” means the land shown on the land plans that is within the limits of land to be acquired or used and described in the book of reference;

“the Order limits” means the limits shown on the works plans within which the authorised project may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(10);

“Paull AGI” means the existing National Grid Gas AGI at Paull in the East Riding of Yorkshire as indicated on works plan 7;

“relevant planning authority” means North Lincolnshire Council or East Riding of Yorkshire Council as the case may be including their successors and where the relevant matter is located in the administrative areas of both then it means both;

“Requirements” means the Requirements set out in Schedule 3 (requirements) and a reference to a numbered Requirement is a reference to the Requirement imposed by the corresponding numbered paragraph of that Schedule;

“stopple” means a device inserted into a pipeline and opened to achieve the isolation or stopping of flow in a live pipeline;

“stopple and bypass pit” means an excavation around the existing gas pipeline for the purposes of fitting a series of stopple tees to allow the tie-in of Work No. 1 to the existing gas pipeline, and a temporary bypass to maintain the supply of gas during tie-in works;

“stopple tee” means an encirclement device to allow insertion of a stopple into a pipeline;

“street” means a street within the meaning of section 48 of the 1991 Act(11), together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“traffic authority” has the meaning given in section 121A (traffic authorities) of the 1984 Act;

“true clean bed” means the interface between accumulated deposits and the underlying drift or solid geology of the Humber Estuary;

“UK marine area” has the same meaning as in section 42 of the 2009 Act;

“undertaker” means National Grid Gas or any person who has the benefit of this Order in accordance with article 10 (transfer of benefit) of this Order;

“watercourse” includes rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order and listed in Part 1 of Schedule 2 (plans).

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order and any document referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work (and in particular in respect of scheduled

(10) 1981 c.67. The definition of “owner” was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34), Sch.15(I) para.9.

(11) Section 48 was amended by the Local Transport Act 2008 (c.26), Pt 7 s.124(2).

linear works referred to in this Order all distances are measured along the indicative pipeline route as shown on the works plans for that work).

(4) All areas described in square metres in the book of reference are approximate.

(5) A reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 2”), is a reference to the work so designated in Schedule 1 (authorised project).

(6) A reference in this Order to a document or plan required to be submitted for certification under article 44 (certification of plans etc.) is a reference to the version of that document or plan that has been certified under article 44.

Application, modification and disapplication of legislative provisions

3.—(1) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

- (a) the Environmental Permitting (England and Wales) Regulations 2010⁽¹²⁾, to the extent that they require a permit for anything that would have required consent under section 109 of the Water Resources Act 1991 immediately before the repeal of that section;
- (b) The provisions of any byelaws made under paragraphs 5, 6 or 6a of Schedule 25 to the Water Resources Act 1991, which require consent or approval for the carrying out of the works.

(2) A power conferred by this Order may be exercised despite, and without having regard to, any provision of byelaws made by the East Riding of Yorkshire Council in its capacity as lead local flood authority but this paragraph does not apply to a provision which permits the taking of any action with the consent of East Riding of Yorkshire Council, of an internal drainage board or of the Environment Agency.

PART 2

Works Provisions

Development consent, etc. granted by Order

4.—(1) Subject to the provisions of this Order and the Requirements in Schedule 3 (requirements), the undertaker is granted—

- (a) development consent for the works comprising the authorised development in Part 1 of Schedule 1 (authorised project) and further associated development relating to those works set out in Part 2 of that Schedule; and
- (b) consent for the ancillary works relating to those works,

to be carried out within the Order limits.

(2) Each Work must be constructed and maintained within the limits of deviation for that Work.

(3) In carrying out a Work, as described in Schedule 1, the undertaker may deviate from the situations shown on the works plans in Schedule 2 (plans) to the extent of the limits of deviation.

Maintenance of authorised project

5.—(1) The undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

⁽¹²⁾ [S.I. 2010/675](#). See amendments made by [S.I. 2016/475](#).

Operation of authorised project

6.—(1) The undertaker is authorised to operate the authorised project.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of the authorised project.

Limits of deviation

7.—(1) Save in relation to the drainage works, where paragraph (2) applies, the undertaker may—

- (a) in respect of the location of any work comprised in the authorised development deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation for that work shown on those plans; and
- (b) in respect of Work No.1 deviate vertically;
 - (i) for each or any part of Work No. 1 referred to in column 1 of the table below, to the limit upwards specified in relation to that part of Work No.1 in column 2 of that table;
 - (ii) to any extent downwards as may be found necessary or practical to a maximum depth of 70 metres below the surface of the ground; and
 - (iii) except that subparagraph (i) does not apply to those parts of Work No.1 that are built within the Goxhill AGI and the Paull AGI.

Table 1

(1) <i>Scheduled Work</i>	(2) <i>Upwards Vertical Deviation Limits</i>			
	Below ground level (m)	Below watercourses (m)	Below true clean bed (m)	Below highways (m)
1A	1.2	1.7	Not applicable	Not applicable
1B	4.0	1.7	7.0	Not applicable
1C	1.2	1.7	Not applicable	2.0

(c) deviate or place Work Nos. 2, 3, 4, 7 and 8 laterally and vertically to the limits set for these works in paragraph 1 of Schedule 1.

(d) carry out construction activities for the purposes of the authorised project anywhere within the Order limits.

(2) The undertaker may construct the drainage works anywhere within the Order limits.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(13) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—

(13) 1990 c.43; section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c.40), Schedule 17 to the Environmental Act 1995 (c.25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16).

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽¹⁴⁾; or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with Requirement 13; or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

Benefit of Order

9.—(1) Subject to article 10 (transfer of benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the benefit of the consent granted by this Order for works carried out by the undertaker for the benefit or protection of land or persons (including statutory undertakers) affected by the authorised project.

Transfer of benefit of Order

10.—(1) The undertaker may with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions in this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

⁽¹⁴⁾ 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

Street Works

11.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it (including for the purposes of carrying out surveys to ascertain the location of apparatus);
- (b) tunnel or bore under the street;
- (c) place apparatus in or under the street;
- (d) maintain apparatus in or under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d) above.

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act⁽¹⁵⁾.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1) save that—

- (a) section 61(1) of the 1991 Act (under which the consent of the street authority is required for the placing of apparatus in a protected street) does not apply to the placing of apparatus in the course of the authorised project;
- (b) section 62(2) of the 1991 Act (power following the designation of a protected street to require removal or repositioning of apparatus already placed in the street) does not, unless otherwise agreed with the undertaker, apply in relation to apparatus placed in the course of the authorised project; and
- (c) section 62(4) of the 1991 Act (power when a designation as a protected street commences or ceases to give directions with respect to works in progress) does not, unless otherwise agreed with the undertaker, apply in relation to the authorised project.

(4) In this article “apparatus” and “street works” have the same meanings as in Part 3 of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, monitoring kiosks and electricity cabinets.

Power to alter layout, etc. of streets

12.—(1) The undertaker may alter the layout of a street specified in column (2) of Schedule 5 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by article 4 (development consent etc. granted by the Order) or paragraph (4) but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised project, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, verge or central reservation within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track, verge or central reservation;
- (c) reduce the width of the carriageway of the street;

⁽¹⁵⁾ Section 48 is amended by the Local Transport Act 2008 (c.26) s.124(2); section 51 is amended by Schedule 1 to the Traffic Management Act 2004 (c.18).

- (d) make crossovers and passing places;
- (e) carry out works for the provision or alteration of parking places, loading bays and cycle tracks; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e) above.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority but such consent must not be unreasonably withheld or delayed.

(4) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and Schedule 5 (streets subject to alteration of layout) as is within the Order limits and may—

- (a) execute any works to provide or improve sight lines required by the highway authority;
- (b) remove and replace kerbs and flume ditches for the purposes of creating permanent and temporary accesses;
- (c) execute and maintain any works to provide hard and soft landscaping;
- (d) carry out re-lining and placement of new temporary markings; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d) above.

Construction and maintenance of new, altered or diverted streets

13.—(1) Any street to be constructed under this Order in respect of which the undertaker has given the highway authority notice that this paragraph applies must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed with the highway authority, must be maintained by and at the expense of the undertaker for a period of 24 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of 24 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Where any street not previously part of the public highway is constructed pursuant to this Order it will on the undertaker giving notice to the highway authority (and street authority if different) that this paragraph applies be deemed to be dedicated for public use as highway on the completion of that street.

(4) Paragraphs (1) to (3) do not apply in relation to the structure of any bridge carrying a street.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it will be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;

- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

- (7) Nothing in this article—
 - (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relating to that street for the purposes of Part 3 of that Act; or
 - (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Temporary stopping up of streets and public rights of way

14.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street or any public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets or public rights of way specified in Schedule 6 (streets and public rights of way to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column 3.

- (4) The undertaker may not temporarily stop up, alter or divert—
 - (a) any street or public right of way specified as mentioned in paragraph (3) without first consulting the highway authority; and
 - (b) any other street or public right of way without the consent of the highway authority, which must not be unreasonably withheld or delayed but the highway authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

15.—(1) The undertaker may, for the purposes of the construction and/or the maintenance of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, as specified in column (2) of Schedule 7 (access to works); and
- (b) with the approval of the relevant planning authority, which is not to be unreasonably withheld or delayed, after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Traffic Regulation

16.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld or delayed, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction, operation, or maintenance of the authorised project—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road;

either at all times or at times, on days or during such periods as may be specified by the undertaker.

- (2) The undertaker may not exercise the powers in paragraph (1) unless it has—
 - (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention under sub-paragraph (a).
- (3) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)—
 - (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act; and
 - (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(16) (road traffic contraventions subject to civil enforcement).

(4) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) at any time.

(5) Before complying with the provisions of paragraph (2) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.

(6) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

Agreements with street authorities

- 17.—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised project;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) any stopping up, alteration or diversion of a street authorised by this Order; or
 - (d) the carrying out in the street of any of the works referred to in article 11(1) (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Discharge of water

18.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits make openings into, and connections with, that watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a question arising under section 106 of the Water Industry Act 1991(17) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to observe the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river unless otherwise authorised under the provisions of Part 3 (for the protection of the Environment Agency) of Schedule 10 (protective provisions) of this Order.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010.

- (8) In this article—

(17) 1991 c.56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c.43) and by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environmental Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964⁽¹⁸⁾ (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

- (a) survey and/or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and/or subsoil and/or to remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological, hydrogeological and/or archaeological investigations on the land; and/or
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and/or investigation of land, the making of trial holes.

(2) The power conferred by sub-paragraph (1)(c) includes without prejudice to the generality of that sub-paragraph the power to take, and process, samples of or from any of the following found on, in or over the land—

- (a) water;
- (b) air;
- (c) soil or rock;
- (d) its flora;
- (e) bodily excretions, or dead bodies, of non-human creatures; or
- (f) any non-living thing present as a result of human action.

(3) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(4) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey, investigation, monitoring, or to make the trial holes.

(5) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be

⁽¹⁸⁾ 1964 c.40.

determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of human remains

20.—(1) In this article “the specified land” means any land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-

interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(19) () (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

(15) Sections 238 and 239 of the 1990 Act (use and development of consecrated land and burial grounds) apply—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised project (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 27 (temporary use of land for carrying out the authorised project) and 28 (temporary use of land for maintaining the authorised project), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order, without prejudice to the status of the land over which the right is exercised as consecrated land,

and in section 238(1)(b) of the 1990 Act reference to a “planning permission” includes this Order, in section 240(1) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (13) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(16) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(20) do not apply to the authorised project.

(19) 1857 c.81; section 25 is amended by the Criminal Justice Act 1982 (c.48) s.46.

(20) S.I. 1950/792.

PART 3

Acquisition and possession of land

Compulsory acquisition of land

21.—(1) Subject to article 24 (acquisition of subsoil only) and article 27 (temporary use of land for carrying out the authorised project, the undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate it, or is incidental to it.

Compulsory acquisition of rights

22.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act, as substituted by article 32 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect.

Extinguishment and suspension of private rights

23.—(1) Subject to the provision of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition by the undertaker of the land whether compulsorily or by agreement; or
- (b) on the date of entry, on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order, are extinguished on the commencement of any activity authorised by this Order which interferes with or breaches such rights or such restrictive covenants.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition of rights or the imposition of restrictions under this Order shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right acquired or the burden of the restriction imposed—

- (a) as from the date of the acquisition of the right or the benefit of the restriction by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right;

whichever is the earliest.

(4) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 33 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) and (5) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made, in so far as it relates to the authorised project, at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested, belongs or benefits.

(8) If any such agreement as is referred to in paragraph 7(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

Acquisition of subsoil only

24.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph 20(1) of article 21 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 32 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Power to override easements and other rights

25.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

(a) the erection, construction or carrying out, operation or maintenance of any part of the authorised project;

- (b) the exercise of any power authorised by this Order; or
 - (c) the use of any land (including the temporary use of land).
- (3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract.
- (4) Where an interest, right or restriction is overridden by paragraph (1), compensation—
- (a) is payable under section 7 or 10 of the 1965 Act⁽²¹⁾; and
 - (b) must be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.
- (5) Nothing in this article may be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 26.—(1) The 1981 Act applies as if this Order were a compulsory purchase order and as if the undertaker were a public authority under section 1(2) of that Act.
- (2) The 1981 Act, as so applied, has effect with the following modifications.
- (3) In section 3 (preliminary notices), for subsection (1) there is substituted—
- “(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—
- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
 - (b) published in a local newspaper circulating in the area in which the land is situated.”
- (4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.
- (5) In that section, for subsections (5) and (6) there is substituted—
- “(5) For the purposes of this section, a person has a relevant interest in land if—
- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
 - (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”
- (6) In section 5 (earliest date for execution of declaration)—
- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
 - (b) subsection (2) is omitted.
- (7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(21) There are amendments that are not relevant to this Order.

(8) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Temporary use of land for carrying out the authorised project

27.—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;
 - (ii) any Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the requisition of rights only) and no declaration has been made under section 4 of the 1981 Act (execution of declaration) for the purposes of constructing and carrying out the authorised project;
- (b) remove any buildings and vegetation from that land referred to in paragraphs (1)(a)(i) and (a)(ii);
- (c) construct temporary works (including the provision of means of access) and buildings on that land referred to in paragraphs (1)(a)(i) and (a)(ii); and
- (d) construct and carry out any mitigation works on that land referred to in paragraphs (a)(i) and (a)(ii).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of two years beginning with the date of completion of the authorised project; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the authorised project unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act,

and in this paragraph the date on which the authorised project is completed means the date on which the undertaker has certified that it is first capable of being brought into operational use for the purpose for which it was designed.

(4) Before giving up possession of land of which temporary possession has been taken under this article, unless otherwise agreed by the owners of the land, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under subparagraph (1)(d); or
- (c) remove any ground-strengthening works which have been placed in that land to facilitate construction of the authorised project.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act by the tribunal using established relevant valuation principles under the Act notwithstanding that paragraph (5) relates to temporary possession rather than the compulsory acquisition of land.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

- (a) acquiring new rights over any part of that land under article 22 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil or of the airspace over (or rights in the subsoil or of the airspace over) that land (other than plot 132 on the land plans) under article 24 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act⁽²²⁾ (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Subject to paragraph (3), nothing in this article prevents the taking of temporary possession pursuant to it more than once in relation to any land specified in paragraph (1).

Temporary use of land for maintaining the authorised project

28.—(1) Subject to paragraph (2) the undertaker may during the maintenance period—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project;
- (b) enter on any land within the Order limits for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised project; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land, except as provided in paragraph (11).

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(22) Section 13 is amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Where the undertaker has identified a potential risk to the safety of—

- (a) the authorised project or any part of it; or
- (b) the public; or
- (c) the surrounding environment,

the requirement to serve not less than 28 days' notice under paragraph (3) does not apply and the undertaker may enter the land pursuant to paragraph (1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

(12) In this article the "maintenance period" means in relation to any part of the authorised project the period of five years beginning with the date on which the authorised project is first brought into operational use for the purpose for which it was designed.

Disregard of certain interests and improvements

29.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration as part of the authorised project was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made as part of the authorised project, directly or indirectly concerned.

Set-off for enhancement in value of retained land

30.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging

to that person in the same capacity which will accrue to that person by reason of the construction of the authorised project.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil), under article 22 (compulsory acquisition of rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised project.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

31. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions under this Order.

Acquisition of part of certain properties

32.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or

- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Statutory undertakers

33.—(1) Subject to the provisions of Schedule 10 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order limits as shown on the land plans and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers where such apparatus is anywhere within the Order limits; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers within the Order limits described in the book of reference and shown on the land plans.

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the

removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the 2003 Act; and

“public utility undertaker” has the same meaning as in the 1980 Act.

Time limit for exercise of authority to acquire land compulsorily

35.—(1) After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Rights under or over streets

36.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Incorporation of the mineral code

37. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(23) (minerals) are incorporated in this Order subject to the modifications that—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for “undertaking” substitute “authorised project”; and
- (c) for “compulsory purchase order” substitute “this Order”.

PART 4

Miscellaneous and general

Application of landlord and tenant law

38.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Deemed consent under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009

39. The marine licence set out in Schedule 9 is deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensable marine activities (as defined in section 66 of the 2009 Act) set out in Part 2, and subject to the conditions set out in Part 3, of the licence

(23) 1981 c.67.

Operational land for purposes of the 1990 Act

40. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

Felling or lopping of trees or shrubs

41.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to persons constructing, maintaining, operating or using the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) The undertaker may remove—

- (a) hedgerows shown on the works plans; and
- (b) with the approval of the relevant planning authority, which is not to be unreasonably withheld or delayed, any other hedgerow within the Order limits if the undertaker reasonably believes it to be necessary to do so for the purposes of the construction and/or operation of the authorised project.

(4) The undertaker is not required to obtain any consent to remove a hedgerow referred to in paragraph (3) under the Hedgerows Regulations 1997(24).

(5) Reference to “planning permission” in regulation 6 (permitted work) of the Hedgerows Regulations 1997 includes this Order.

(6) In this article—

- (a) “hedgerow” includes—
 - (i) hedgerows to which the Hedgerows Regulations 1997 apply; and
 - (ii) any part of a hedgerow.

(7) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Protective provisions

42. Schedule 10 (protective provisions) to this Order has effect.

Crown rights

43.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to use, enter upon or in any manner interfere with any land or rights of any description—
 - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(24) [S.I. 1997/1160](#).

- (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.
- (2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

Certification of plans etc.

44.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access and rights of way plans;
- (b) the book of reference;
- (c) the environmental statement;
- (d) the land plans;
- (e) the works plans;
- (f) the initial CEMP; and
- (g) the initial TMP

for certification that they are true copies of the plans or documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

45.—(1) A notice or other document required or authorised to be served, given or supplied under this Order may be served, given or supplied in any of these ways—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied;
- (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address;
- (c) by sending it by post, addressed to that person at that person's usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;
- (d) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at that person's usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;
- (e) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (2), to that person at that address;
- (f) in the case of an incorporated company or body—

- (i) by delivering it to the secretary or clerk of the company or body at their registered or principal office;
 - (ii) by sending it by post, addressed to the secretary or clerk of the company or body at that office; or
 - (iii) by sending it in a prepaid registered letter or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.
- (2) The condition mentioned in sub-paragraph (e) is that the notice or other document must be -
- (a) capable of being accessed by the person mentioned in that provision;
 - (b) legible in all material respects; and
 - (c) in a form sufficiently permanent to be used for subsequent reference.
- (3) For the purposes of paragraph (2), “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

46. Any difference under any provision of this Order, unless otherwise provided for (including determination by the tribunal) or unless otherwise agreed between the parties, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Procedure in relation to certain approvals etc.

47. Schedule 12 (Procedure in relation to certain approvals etc.) has effect.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Giles Scott
Head of Energy Infrastructure Planning and Coal
Liabilities
Department for Business, Energy and Industrial
Strategy

25th August 2016