
STATUTORY INSTRUMENTS

2022 No. 157

INFRASTRUCTURE PLANNING

**The Thurrock Flexible Generation Plant
Development Consent Order 2022**

Made - - - - 16th February 2022

Coming into force - - 10th March 2022

An application has been made to the Secretary of State under section 37 of the Planning Act 2008(1) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(2) for an Order granting development consent.

The application was examined by a single appointed person (appointed by the Secretary of State) pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(3).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83(1) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State has considered the representations made and not withdrawn, and the recommendations and report of the single appointed person, and taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(4) and, as a national policy statement has effect in relation to the proposed development, has had regard to the documents and matters referred to in section 104(2)(5) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State is satisfied that replacement land has been or will be given in exchange for the special category land specified in the land plans and special category land plans (as defined in article 2 of this Order) as “permanent freehold acquisition” land, and the replacement land (as defined in that article) has been or will be vested in the prospective seller and subject to the same rights, trusts

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- (1) [2008 c. 29](#). Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13(1) to, the Localism Act [2011 \(c. 20\)](#). Section 83(1) was amended by paragraph 35 of that Schedule. Section 114 was amended by paragraph 55 of that Schedule. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13(1) to, that Act.
 - (2) [S.I. 2009/2264](#), as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 ([S.I. 2012/635](#)) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013 ([S.I. 2013/522](#)). There are other amendments to the Regulations which are not relevant to this Order.
 - (3) [S.I. 2010/103](#), amended by [S.I. 2012/635](#).
 - (4) [S.I. 2017/572](#).
 - (5) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act [2009 \(c. 23\)](#) and by section 128(2) and Schedule 13, paragraphs 1 and 49(1) to (6) of the Localism Act [2011 \(c. 20\)](#).

and incidents as attach to the special category land, and that, accordingly, section 131(4) of the 2008 Act applies.

The Secretary of State is satisfied that the special category land specified in the land plans and special category land plans (as defined in article 2 of this Order) as “acquisition of permanent new rights” land, when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and schedule 5 to the 2008 Act, makes the following Order:

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the Thurrock Flexible Generation Plant Development Consent Order 2022 and comes into force on 10th March 2022.

Interpretation

2.—(1) In this Order except where provided otherwise—

“1961 Act” means the Land Compensation Act 1961(6);

“1965 Act” means the Compulsory Purchase Act 1965(7);

“1980 Act” means the Highways Act 1980(8);

“1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(9);

“1984 Act” means the Road Traffic Regulation Act 1984(10);

“1990 Act” means the Town and Country Planning Act 1990(11);

“1991 Act” means the New Roads and Street Works Act 1991(12);

“2008 Act” means the Planning Act 2008(13);

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

“the access, rights of way and traffic management plans” means the plans certified as such by the Secretary of State for the purposes of this Order under article 38;

“apparatus” has the same meaning as in section 105(1) of the 1991 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development), which is development within the meaning of section 32 of the 2008 Act;

(6) 1961 c. 33.

(7) 1956 c. 65.

(8) 1980 c. 66.

(9) 1981 c. 66.

(10) 1984 c. 27.

(11) 1990 c. 8.

(12) 1991 c. 22.

(13) 2008 c. 29.

“book of reference” means the document approved in accordance with requirement 30 and certified by the Secretary of State as the book of reference for the purposes of the 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;

“commence” means carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or for the purposes of the authorised development other than the permitted preliminary works and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“completion” means the date on which the authorised development commences operation by generating power on a commercial basis, but excluding the generation of power during commissioning, and “complete” and “completed” and cognate expressions are to be construed accordingly;

“conceptual drainage strategy” means the document certified as such by the Secretary of State for the purposes of this Order;

“design principles statement” means the document certified by the Secretary of State as the design principles statement for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental statement” means the documents certified by the Secretary of State as the environmental statement for the purposes of this Order;

“highway authority” means Thurrock Borough Council;

“Highways England” means Highways England Company Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4LZ;

“the illustrative cross section plans” means the document certified as the illustrative cross section plans by the Secretary of State for the purposes of the Order;

“the illustrative landscape plan” means the document certified as the illustrative landscape plan by the Secretary of State for the purposes of the Order;

“the land plans and special category land plans” means the document approved under requirement 30 and certified as the land plans and special category land plans by the Secretary of State for the purposes of this Order;

“maintain” includes inspect, repair, adjust or alter the authorised development, and remove, reconstruct or replace any part, provided that 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” is to be construed accordingly;

“NGET” means National Grid Electricity Transmission Plc (company number 02366977), whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

“NGG” means National Grid Gas Plc (company number 02006000), whose registered offices is at 1 to 3 Strand, London, WC2N 5EH;

“Order land” means the land which is required for the authorised development shown on the land plans and described in the book of reference;

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

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of the Order;

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of the Order;

“outline construction worker travel plan” means the document certified as the outline construction worker travel plan by the Secretary of State for the purposes of the Order;

“outline ecological management plan” means the document certified as the outline ecological management plan by the Secretary of State for the purposes of the Order;

“outline employment and skills strategy” means the document certified as the outline local employment and skills strategy by the Secretary of State for the purposes of the Order;

“outline written scheme of archaeological investigation” means the document certified as the outline written scheme of archaeological investigation by the Secretary of State for the purposes of the Order;

“owner” in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(14);

“permitted preliminary works” means all or any of—

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations;
- (b) above ground site preparation for temporary facilities for the use of contractors;
- (c) the provision of temporary means of enclosure and site security for construction;
- (d) the temporary display of site notices or advertisements;
- (e) protected species relocation in accordance with a relevant licence;
- (f) infilling of ditches and creation of new ditches; and
- (g) site clearance (including vegetation removal, vegetation management to create or enhance habitat);

“plot” means the plots listed in the book of reference and shown on the land plans;

“the port” means

- (a) any land (including land covered by water) within the Port of Tilbury which is owned or used by Port of Tilbury London Limited for the purposes of its statutory undertaking; as at the date of the Order;
- (b) the Work no. 15 land; and
- (c) any land within the limits of deviation of Work nos. 12(a), 12(c), 12(d) and 12(e), and any land comprised in plots 01/09, 01/10 and 01/15 shown on the land plans and special category land plans, in which Port of Tilbury London Limited holds an interest,

together with any quays, jetties, docks, river walls and other land (including land covered by water) or works held in connection with that undertaking;

“Port of Tilbury London Limited” means the statutory harbour authority for and operator of the Port of Tilbury, London;

“relevant planning authority” means Thurrock Borough Council;

“replacement land” means the land forming plot 01/07 listed in the book of reference and shown on the special category land plan of the land plans as replacement common land;

“requirement” means those matters set out in Schedule 2 (requirements) and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Schedule with the same number;

“RWE” means RWE Generation UK Plc, company number 03892782, whose registered office is at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB;

“special category land” means the land registered as common land under the Commons Registration Act 1965 and shown on the special category land plan of the land plans;

“statutory undertaker” has the same meaning as set out in section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the Communications Act 2003(15);

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

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

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

“the undertaker” means Thurrock Power Limited, company number 10917470, whose registered office is at 1st Floor, 145 Kensington Church Street, London, W8 7LP;

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

“work” means a work set out in Schedule 1; and a reference to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule;

“working day” means any day other than a Saturday, Sunday, or English bank or public holiday;

“Work no.15 land” means the land within the limits of deviation of Work no. 15 owned by Port of Tilbury London Limited; and

“works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

(2) Reference 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 airspace above its surface, and to any trusts or incidents (including restrictive covenants) to which the land is subject, and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of the land which is acquired under this Order or is otherwise comprised in the Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work are taken to be measured along that work.

(4) In this Order “includes” must be construed without limitation.

(5) References in this Order to any statutory body include that body’s successor bodies as from time to time have jurisdiction in relation to the authorised development.

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3. Subject to the provisions of this Order, including the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Limits of deviation

4.—(1) The undertaker must construct the authorised development within the Order limits shown on the works plans.

(2) In constructing or maintaining the authorised development, the undertaker may deviate laterally from the indicative centrelines or situations of the authorised development shown on the works plans to the extent of the limits of deviation for each work shown on those plans and vertically from the levels of the authorised development shown on the illustrative cross section plans—

- (a) upwards only within the parameters for the relevant work set out in table 1 in requirement 4; or
- (b) downwards to any distance.

Maintenance of authorised development

5.—(1) Subject to sub-paragraph (2), the undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of generating station

6.—(1) The undertaker is authorised to use and operate the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any legislation that may be required from time to time to authorise the operation of the authorised development.

Benefit of Order

7.—(1) Subject to article 8 (consent to transfer benefit of order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to—

- (a) Work no. 3 in relation to which this Order has effect for the benefit of the undertaker and NGET; and
- (b) Work nos. 4 and 5 in relation to which this Order has effect for the benefit of the undertaker and NGG.

Consent to transfer benefit of Order

8.—(1) Subject to paragraphs (4) and (5), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of 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.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transferee or lessee is—

- (a) the holder of a licence under section 6 of the Electricity Act 1989(16);
- (b) in relation only to a transfer or lease of Work nos. 4 or 5, the holder of a licence under section 7 of the Gas Act 1986(17);
- (c) in relation to a transfer or lease of any works within a highway, a highway authority responsible for the highways within the Order limits; and
- (d) in relation to a transfer or lease of any works within a street situated within the Port of Tilbury or Work no. 15, Port of Tilbury London Limited or any successor as the statutory harbour authority for the Port of Tilbury.

(5) Where the consent of the Secretary of State is not required under paragraph (4) the undertaker must notify the Secretary of State and the Port of Tilbury London Limited in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of 14 days from the date of the receipt of the notice.

(8) The notice given under paragraph (5) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(18) in relation to a nuisance falling within paragraph (g) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(19);

(16) 1989 c. 29.

(17) 1986 c. 44. Section 7(1) was amended by section 76 of the Utilities Act 2000 (c. 27) and section 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

(18) 1990 c. 43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25). There are amendments to this Act which are not relevant to this Order.

(19) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 3 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (prior consent for work on construction site) of the Control of Pollution Act 1974 does 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 development.

Disapplication of legislation etc.

10.—(1) The following enactments do not apply in relation to the construction of any work or the carrying out of any operation for the purpose of, or in connection with, the construction of the authorised development or any maintenance of any part of the authorised development—

- (a) the West Tilbury Commons, West Tilbury, Essex, Bye-Laws, made by the Conservators of West Tilbury Commons, under the powers of the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893⁽²⁰⁾;
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991⁽²¹⁾;
- (c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991⁽²²⁾;
- (d) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016⁽²³⁾ in respect of a flood risk activity (including works affecting sea defences) only;
- (e) sections 23 and 30 of the Land Drainage Act 1991⁽²⁴⁾; and
- (f) the provisions of the Neighbourhood Planning Act 2017⁽²⁵⁾ in so far as they relate to the temporary possession of land under articles 28 and 29 of this Order.

(2) The carrying out of any of the following works and operations—

- (a) Work nos. 12(a), 12(e), and 15;
- (b) any ancillary work listed in Schedule 1;
- (c) the use of any street within the port or Work no. 12 for the passage of construction, maintenance or decommissioning vehicles utilised for the authorised development; and
- (d) any activities carried out pursuant to the requirements set out in Schedule 2,

is not to be regarded as conflicting, or constituting non-compliance by Port of Tilbury London Limited, with the following requirements in Schedule 2 to the Port of Tilbury (Expansion) Order 2019—

- (a) Requirement 4;

⁽²⁰⁾ 1893 c. 102.

⁽²¹⁾ 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

⁽²²⁾ As substituted by section 31 of, and paragraphs 25 and 38 of Schedule 2 to the Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).

⁽²³⁾ 2016/1154.

⁽²⁴⁾ 1991 c. 59.

⁽²⁵⁾ 2017 c. 20.

- (b) Requirement 5;
- (c) Requirement 11 (c), (d), (f) and (h); and
- (d) Requirement 12.

PART 3 STREETS

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in 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).

(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.

(3) Subject to article 12 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Application of the 1991 Act

12.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3)(**26**) of that Act; or
- (b) they are works which, had they been executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64(**27**) (dual carriageways and roundabouts) of the 1980 Act or section 184(**28**) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act references to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56(**29**) (power to give directions as to timing of street works);

(26) Section 86(3) defines what highway works are major highway works.

(27) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(28) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 18 of and Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22).

(29) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).

- (b) section 56A(30) (power to give directions as to placing of apparatus);
- (c) section 58(31) (restriction on works following substantial road works);
- (d) section 58A(32) (restriction on works following substantial street works); and
- (e) schedule 3A(33) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(34) referred to in paragraph (4) are—

- (a) section 54 (advance notice of certain works), subject to paragraph (6);
- (b) section 55 (notice of starting date of works), subject to paragraph (6);
- (c) section 57 (notice of emergency works);
- (d) section 59 (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 75 (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Temporary restriction of use of streets

13.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (4), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may temporarily restrict or control the use of the streets set out in column 2 of Schedule 4 to the extent set out in column 3 of that Schedule.

(3) The undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

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

(30) Inserted by section 44 of the Traffic Management Act 2004 (c. 18).

(31) As amended by section 51 of the Traffic Management Act 2004.

(32) Inserted by section 52 of the Traffic Management Act 2004.

(33) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.

(34) All as amended by the Traffic Management Act 2004.

(5) The undertaker must not temporarily alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(6) 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 (determination of questions of disputed compensation) of the 1961 Act.

(7) Save for any application made to Highways England, if a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Access to works

14. The undertaker may, for the purposes of the authorised development, form and lay out 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 development.

Traffic regulation

15.—(1) From such a date as the undertaker may determine, the application of the traffic regulation order listed in column 3 of Schedule 3 will be suspended until the completion of the authorised development.

(2) The undertaker must notify the chief officer of police and the traffic authority in whose area the road is situated of the commencement of suspension under paragraph 1 not less than 14 days before the date to be determined under paragraph (1), and 14 days prior to completion of the authorised development of the date of completion for the purposes of paragraph (1).

(3) Without limitation on the scope of paragraph (1), and 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, the undertaker may, for the purposes of the authorised development revoke, amend or suspend in whole or in part any order not listed in Schedule 3 made, or having effect as if made, under the 1984 Act, either at all times or at times, on days or during such periods as may be specified by the undertaker.

(4) The power conferred by paragraph (3) may be exercised at any time prior to the expiry of 12 months from the commencement of operation of the authorised development but subject to paragraph (8) any prohibition, restriction or other provision made under this article may have effect both before and after the expiry of that period.

(5) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (6).

- (6) The undertaker must not exercise the powers conferred by this article unless it has—
- (a) given not less than—
 - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,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 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)

(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of subparagraph (a)(ii).

- (7) Any prohibition, restriction or other provision made by the undertaker under this article—
- (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 (power of local authorities to provide parking places) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
 - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004⁽³⁵⁾.
- (8) 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 this article within a period of 24 months from the opening of the authorised development.
- (9) Before exercising the powers conferred by this article the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.
- (10) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (11) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (12) Save for any application made to Highways England, if the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development 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, the 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 under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991⁽³⁶⁾.

(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 or the person or body otherwise having authority to give such consent; and such consent may be given subject to such terms and conditions as that person may reasonably impose but must not be unreasonably withheld.

⁽³⁵⁾ 2004 c. 18.

⁽³⁶⁾ 1991 c. 56.

- (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 supervise the making of the opening.
- (5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (6) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016⁽³⁷⁾.
- (7) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57(1) (interpretation) of the Harbours Act 1964⁽³⁸⁾, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
 - (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991⁽³⁹⁾ have the same meaning as in that Act.
- (8) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval, as the case may be.

Authority to survey and investigate the land

- 17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—
- (a) survey 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 subsoil and remove soil samples;
 - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least fourteen days’ notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required before or after 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 or investigation or to make the trial holes.
- (4) No trial holes are to be made under this article—

⁽³⁷⁾ S.I. 2016/1154. “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

⁽³⁸⁾ 1964 c. 40.

⁽³⁹⁾ 1991 c. 57.

- (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.

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

Removal of human remains

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

(2) Before any such remains are removed from within the Order limits the undertaker must give notice of the intended removal, describing the location of the identified remains 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 boundary of the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specific land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), 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 (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

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

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order limits; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who has given the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) 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 (9), 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.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) 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.

(10) 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 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 (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) 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.

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

(13) Section 25 of the Burial Act 1857⁽⁴⁰⁾ (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) is not to apply to a removal carried out in accordance with this article.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

19.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) This article is subject to paragraph (3), article 21, article 22 (compulsory acquisition of rights), article 25 (acquisition of subsoil etc. only), article 28 (temporary use of land for carrying out the authorised development) and article 33 (special category land).

(3) The undertaker may only exercise the power conferred by paragraph (1) on land comprised in 1 of the 2 options for access forming part of Work no. 12 being—

- (a) the area within Work no. 12(c) as shown on the works plans and comprising plots 01/19, 01/21, 01/22, 01/30, 01/31 and 01/32 and part of plot 01/20, as shown on the lands plans; or
- (b) the area within Work no. 12(d) as shown on the works plans and comprising plots 01/27, 01/28, 01/29, 04/05, and 04/06 and part of plot 04/03 as shown on the lands plans; and

⁽⁴⁰⁾ 1857 c. 81. Section 25 Substituted by Church of England (Miscellaneous Provisions) Measure 2014 (No. 1) section 2. There are other amendments to this Act which are not relevant to this Order.

where the undertaker serves notice to treat under section 5 of the 1965 Act, or makes a declaration under section 4 of the 1981 Act over any of the land specified in either (a) or (b), it must at the same time serve on the owners of the land of the other option, a notice specifying that compulsory acquisition powers cannot be exercised over that land under this Order.

Statutory authority to override easements and other rights

20.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
 - (b) a breach of restriction as to use of land arising by virtue of contract.
- (2) The undertaker must pay compensation to any person whose land is injuriously affected by—
- (a) an interference with an interest or right to which this article applies; or
 - (b) a breach of restriction as to use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are 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 use 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 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
 - (b) is to 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 is to 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.

Time limit for exercise of authority to acquire land compulsorily

- 21.**—(1) After the end of the period 5 years beginning on the day on which this Order is made—
- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
 - (b) no declaration may be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 24 (application of the 1981 Act).

(2) The authority conferred by article 28 (temporary use of the land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph is to prevent 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.

Compulsory acquisition of rights

22.—(1) Subject to paragraphs (2) and (3), the undertaker may acquire compulsorily such rights or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column 1 of Schedule 5 (land of which temporary possession may be taken and in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land and the imposition of such restrictive covenants as are specified in column 2 of that Schedule.

(3) The undertaker may only exercise the power conferred by paragraph (1) on land comprised in 1 of the 2 options for access forming part of Work no. 12 being—

- (a) the area within Work no. 12(c) as shown on the works plans and comprising plots 01/19, 01/21, 01/22, 01/30, 01/31 and 01/32 and part of plot 01/20, as shown on the land plans; or
- (b) the area within Work no. 12(d) as shown on the works plans and comprising plots 01/27, 01/28, 01/29, 04/05, and 04/06 and part of plot 04/03 as shown on the land plans; and

where the undertaker serves notice to treat under section 5 of the 1965 Act or makes a declaration under section 4 of the 1981 Act over any of the land specified in either (a) or (b), it must at the same time serve on the owners of the land of the other option, a notice specifying that compulsory acquisition powers cannot be exercised over that land under this Order.

(4) Subject to section 8 of the 1965 Act (other provisions as to divided land), where the undertaker acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation a new right or the imposition of restrictive covenants.

Private rights

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

- (a) as from the date of acquisition of the land 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 (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the land 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 (power of entry) in pursuance of the right,

whichever is earliest.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights 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 and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this Order 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 or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertaker etc.) or article 30 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights over 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 at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(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) This article is subject to article 22(4).

Application of the 1981 Act

24.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied, has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) Omit section 5 (earliest date for execution of declaration).

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B(1) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 21 of the Thurrock Flexible Generation Plant Development Consent Order 2022”.

(7) In section 6 (notices after execution of declaration) for subsection (1)(b) substitute—

“(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008,”.

(8) In section 7 (constructive notice to treat) in subsection (1)(a) omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“But see article 25(3) (acquisition of subsoil only) of the Thurrock Flexible Generation Plant Development Consent Order 2022, which excludes the acquisition of subsoil from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act are to be constructed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 26 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of the land under this Order.

Acquisition of subsoil only

25.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 19 (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights) 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 to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 22(5) and paragraph 8 of Schedule 7 as the case may be) from applying where the undertaker acquires any part of, or rights in a cellar, vault, arch or other construction forming part of a house, building or factory.

(4) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 26 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

Modification of Part 1 of the 1965 Act

26.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Thurrock Flexible Generation Plant Development Consent Order 2022”.

(3) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of authority to acquire land compulsorily) of the Thurrock Flexible Generation Plant Development Consent Order 2022”.

Rights under or over streets

27.—(1) The undertaker may enter upon 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 authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(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 or any easement or right in the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be 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.

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 5 (land of which temporary possession may be taken and in which only rights etc. may be acquired) for the purposes of constructing the authorised development;
 - (ii) the land in column 1 of Schedule 6 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (iii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration), other than in connection with the acquisition of rights only;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (2) of Schedule 5 or column (3) of Schedule 6, or any mitigation;

but may not use the power granted under this article to construct any new means of access within Work nos. 12(c) or 12(d) unless details of the design for the new road section to be constructed as part of that work have been approved under requirement 4 of Schedule 2 to this Order.

(2) Not less than fourteen 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) and (ii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken; or
- (b) in the case of land referred to in paragraph (1)(a)(iii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land 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, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, 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)(ii).

(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) Nothing in this article prevents the taking of temporary possession of any land more than once.

Temporary use of land for maintaining the authorised development

29.—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph 11) relating to any part of the authorised development, the undertaker may—

- (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 development; and
- (b) 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 twenty-eight 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.

(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 development 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.

(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, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, 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 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article "the maintenance period" means the period of 5 years beginning with the date on which the generating station forming Work no.1A first exports electricity to the national electricity transmission network.

Statutory undertakers

30. Subject to article 22 and the provisions of Schedule 8 (protective provisions), the undertaker may—

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

Apparatus and rights of statutory undertakers in stopped up streets

31. Where a street is temporarily altered or diverted or its use is temporarily stopped up under article 13 (temporary restriction of use of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and right in respect of that apparatus, subject to Schedule 8 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

32.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (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 public sewer but where such a sewer is removed under article 30 (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 article 31 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003⁽⁴¹⁾; and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

Special category land

33.—(1) The special category land is not to vest in the undertaker by virtue of any power granted by this Order until the undertaker has acquired the replacement land and the relevant planning authority has certified that the replacement land has been satisfactorily laid out and been made available by the undertaker.

(2) On the requirements of paragraph (1) being satisfied the replacement land is to vest in the person(s) in whom the special category land was vested immediately before it was vested in the undertaker and is to be subject to the same rights trusts and incidents as attached to the special category land.

(3) As soon as reasonably practicable after paragraph (2) takes effect, the undertaker must apply under section 14 (statutory dispositions) of the Commons Act 2006⁽⁴²⁾ and paragraph 8 of Schedule 4 (applications pursuant to section 14: statutory dispositions) to the Commons Registration (England) Regulations 2014⁽⁴³⁾ to amend the relevant register of common land accordingly.

(4) In this article “rights, trusts and incidents” includes all such provisions contained in the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893 or having effect under that Act and s193 of the Law of Property Act 1925.

Funding

34.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place either—

- (a) a guarantee, and the amount of that guarantee has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or

⁽⁴¹⁾ 2003 c. 21.

⁽⁴²⁾ 2006 c. 26.

⁽⁴³⁾ S.I. 2014/3038.

- (b) an alternative form of security, and the amount of that security for that purpose has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).
- (2) The provisions are—
- (a) article 19 (compulsory acquisition of land);
 - (b) article 22 (compulsory acquisition of rights);
 - (c) article 23 (private rights);
 - (d) article 25 (acquisition of subsoil only);
 - (e) article 28 (temporary use of land for carrying out the authorised development);
 - (f) article 29 (temporary use of land for maintaining the authorised development); and
 - (g) article 30 (statutory undertakers).
- (3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.
- (4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

- 35.**—(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits 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 development or any apparatus used in connection with the authorised development; or
 - (b) from constituting a danger to persons using the authorised development.
- (2) In carrying out any activity authorised by paragraph (1), the undertaker must—
- (a) do no unnecessary damage to any tree or shrub; and
 - (b) pay compensation to any person for any loss or damage arising from such activity.
- (3) 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.
- (4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.
- (5) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997⁽⁴⁴⁾.

⁽⁴⁴⁾ S.I. 1997/1160.

PART 7

MISCELLANEOUS AND GENERAL

Protective provisions

36. Schedule 8 (protective provisions) has effect.

Operational land for the purposes of the 1990 Act

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

Certification of plans, etc.

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

- (a) the land plans and special category land plans (consisting of a key plan and sheets 1 to 5 inclusive) as approved by the Secretary of State under requirement 30;
- (b) the works plans (document number A2.3);
- (c) the illustrative cross section plans (document number A2.8);
- (d) the illustrative landscape plan (document number A2.9);
- (e) the conceptual drainage strategy (document number A7.3);
- (f) the book of reference as approved by the Secretary of State under requirement 30;
- (g) the environmental statement (document number A6.0);
- (h) the design principles statement (document number A8.4);
- (i) the outline code of construction practice (document number A8.6);
- (j) the outline ecological management plan (document number A8.7);
- (k) the outline construction traffic management plan (document number A8.8);
- (l) the outline construction worker travel plan (document number A8.9);
- (m) the outline written scheme of archaeological investigation (document number A8.11);
- (n) the outline employment and skills strategy (document number A8.13); and
- (o) any other plans or documents referred to in this Order as requiring certification,

for certification that they are true copies of the 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

39.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978⁽⁴⁵⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “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.

(45) 1978 c. 30.

No double recovery

40. 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 of this Order.

Application of landlord and tenant law

41.—(1) This article applies to any agreement entered into by the undertaker under article 8 (consent to transfer of benefit of Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(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) No enactment or rule of law to which paragraph (2) applies is to apply 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.

Arbitration

42.—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) 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.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order shall not be subject to arbitration.

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

Gareth Leigh
Head of Energy Infrastructure Planning
Department for Business, Energy and Industrial
Strategy

16th February 2022

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administrative area of Thurrock Borough Council

The construction, operation and maintenance of a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, comprising—

Work no. 1 – An electricity generating station and battery storage facility comprising—

1A – Gas fired electricity generating station with a gross rated electrical output of up to 620 MW consisting of—

- (a) engine house building(s);
- (b) up to 48 gas reciprocating engines;
- (c) up to 48 exhaust stacks;
- (d) up to 48 gas engine exhaust energy recovery systems;
- (e) cooling system;
- (f) air pollutant control system;
- (g) lubricating oil and air pollutant control system reagent storage;
- (h) a gas pre-heat, metering and pressure reduction compound; and

1B – Battery storage facility with a net rated electrical output of up to 150 MW for four hours consisting of—

- (a) storage battery houses or containers;
- (b) storage inverter containers;
- (c) cooling system; and

1C – Facilities to serve both 1A and 1B consisting of—

- (a) electrical equipment comprising 132 kV and 275 kV substations and electrical cables, switch houses and switch rooms, and auxiliary transformers;
- (b) fire suppression system and firewater tank;
- (c) operations, maintenance and storage buildings;
- (d) control room(s);
- (e) septic tank or packaged foul treatment plant;
- (f) internal roads and parking;
- (g) surface water drainage;
- (h) surface water runoff attenuation pond(s); and
- (i) landscaping.

Together with associated development within the meaning of section 115(2) of the 2008 Act—

Work no. 2 – Creation and enhancement of onshore wildlife habitat including topsoil strip, planting, construction of ditches, mounds and banks, and enhancement of retained ditches for ecological benefit; and connection of retained ditches to Work no. 1C(r) surface water drainage.

Work no. 3 – An electrical connection to Tilbury Substation comprising—

3A – 275 kV high-voltage underground cables for electricity export and lower voltage underground cables for auxiliary power supply; and

3B – Connection equipment in Tilbury Substation consisting of—

- (a) civil works – equipment bases, cable trenching, fencing;
- (b) electrical equipment installation – current transformers, voltage transformers, high accuracy metering equipment, circuit breakers, disconnectors and emergency shutoff;
- (c) cable sealing end (where underground high voltage transmission cables join to existing overhead transmission cable) including, base, structure and terminations;
- (d) blockhouse (switch room); and
- (e) control and protection modifications for the re-equipped bay and integration to the site wide systems, including busbar protection.

Work no. 4 – An underground high-pressure gas pipeline between Work no. 1 and Work no. 5A and gas pipeline(s) within Work no. 1.

Work no. 5 – A connection point to the gas National Transmission System comprising—

5A – A gas connection compound with landscaping consisting of—

- (a) a National Grid Minimum Offtake Connection facility containing remotely operable valve, control and instrumentation kiosk, and electrical supply kiosk;
- (b) a Pipeline Inspection Gauge Trap Facility containing pipeline inspection gauge launching facility, emergency control valve, isolation valve, control and instrumentation kiosk, and electrical supply kiosk; and

5B – If required by the siting of Work no. 5A, a high-pressure underground gas pipeline between Work no. 5A(a) and the gas National Transmission System; and

5C – An access track and junction from Station Road with drainage and landscaping.

Work no. 6 – An access road and junction from Station Road with drainage and landscaping.

Work no. 7 – A water supply connection to the water main at Station Road.

Work no. 8 – Construction compound(s) and laydown area(s) south of Tilbury Loop railway.

Work no. 9 – *Not used.*

Work no. 10 – *Not used*

Work no. 11 – *Not used.*

Work no. 12 – An access road from the A1089 St Andrew's Road comprising—

- (a) improvements, repairs, widening, realignment and surfacing of existing private roads, verges and hardstanding areas, to make the route suitable for use by heavy goods vehicles;

and connecting to 12(a)—

- (b) *not used*;
- (c) engineering works and construction of new road sections with drainage and landscaping;
- (d) engineering works and construction of new road sections with drainage and landscaping; and
- (e) engineering works and construction of new road section with alterations to ditch and electrical service boxes.

Status: This is the original version (as it was originally made).

Work no. 13 – A footbridge, ground works and fencing for a permissive path between Fort Road and Work no. 14.

Work no. 14 – Creation of approximately 115,775m² of common land with planting and landscaping.

Work no. 15 - An access road and junction from Fort Road to the Port of Tilbury access road, comprising engineering works and construction of new road with gates, fencing and alterations to drainage, landscape planting and alteration of services.

In connection with the construction of any of those works comprising the Nationally Significant Infrastructure Project or associated development to the extent that they do not otherwise form part of any such work, further development within the Order limits consisting of—

- (a) retaining walls, embankments, barriers, parapets, drainage, fencing, culverts and lighting;
- (b) site clearance (including fencing and demolition of existing structures), earthworks (including soil stripping and storage, site levelling) and remediation of contamination if present;
- (c) works to alter the position of apparatus at or below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus;
- (d) construction compounds and working sites, storage areas, temporary vehicle parking, ramps and other means of access, internal roads and tracks, perimeter enclosures, security fencing, construction-related buildings, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences including provision of services and utilities;
- (e) landscaping, planting, tree planting and erection of permanent means of enclosure and boundary facilities including fences and gates, alteration of drains and ditches;
- (f) alteration of layout of streets to form temporary and permanent accesses, altering the level of any kerb, footway or verge within a street and surface treatments;
- (g) diversions during construction of existing access routes and subsequent reinstatement of existing routes; and
- (h) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development but only insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“AOD” means above Ordnance Datum;

“CCR area” means the area reserved for carbon capture readiness as shown on the work plans;

“commissioning” means the process during which plant components and systems forming part of the authorised development, having been constructed or modified, are made operational and are tested and verified to be in accordance with design assumptions and to have met the appropriate safety criteria;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990⁽⁴⁶⁾;

“discharging authority” means any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement;

“LEMP” means the Landscape and Ecological Management Plan;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006)⁽⁴⁷⁾ the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“Network Rail property” means any railway belonging to Network Rail within the Order limits and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“requirement consultee” means any body named in a requirement as a body to be consulted by the discharging authority in discharging that requirement.

Time limit

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

Notice of commencement of authorised development

3. Notice of commencement of the authorised development must be given to the relevant planning authority within 7 days of the date on which the authorised development is commenced.

Detailed design

4.—(1) No part of the authorised development can commence until written details of the following for that part have been submitted to and approved by the relevant planning authority specifying—

- (a) the siting, design, external appearance, dimensions and floor levels of all permanent buildings and structures;
- (b) the colour, materials and surface finishes of all permanent buildings and structures; and
- (c) details of the provision made for cycle parking facilities for staff.

⁽⁴⁶⁾ 1990 c. 43.

⁽⁴⁷⁾ 2006 c. 46.

Status: This is the original version (as it was originally made).

- (2) The details to be submitted for approval under sub-paragraph 9(1) must—
- be in accordance with the design principles statement;
 - include flood resistance and resilience measures for a flood level of up to 2.84m above Ordnance Survey datum for critical equipment; and
 - include appropriately scaled plans and sectional drawings.

(3) No works creating or affecting culverts in ordinary watercourses or the balancing pond east of Fort Road may be commenced unless the detail of such works has been approved by the relevant planning authority in consultation with Thurrock Council in its capacity as the lead local flood authority.

(4) In so far as the details submitted under paragraph (1) relate to Work no. 4, the relevant planning authority must consult Highways England on those details prior to issuing any approval under that paragraph.

(5) The authorised development must be designed in accordance with the parameters specified in Table 1 below and the works plans and constructed in accordance with approved plans and any other approvals given by the relevant planning authority pursuant to this requirement.

Table 1

<i>Parameter</i>	<i>Work no.s</i>	<i>Maximum value(s) and unit</i>
Gas engine exhaust stack height	1A(c)	43m AOD
Gas engine building(s) or equipment dimensions (in total)	1A(a, b, d, e, f)	Width: 135m Length: 265m Height: 20m
Battery building(s) or containers dimensions (in total)	1B	Width: 106m Length: 106m Height: 10m
Customer substation equipment height	1C(l)	15m
Height of all equipment and structures within Work 1 not otherwise specified	1	10m
National grid gas connection compound dimensions	5A	Width: 50m Length: 50m Height: 5m
Gas pipeline(s) maximum excavation depth	4	4m for trenched or 5m below base of feature crossed for trenchless construction
Underground cable(s) maximum depth	3A	4 m for trenched or 5 m below base of feature crossed for trenchless construction

<i>Parameter</i>	<i>Work no.s</i>	<i>Maximum value(s) and unit</i>
Road construction working corridor width	6	20 m
Gas pipeline construction working corridor width	4	23 m
CCR minimum area	n/a	32,100 m ²
Footbridge to replacement common land	13	Must be a clear span structure

(6) The buildings and structures identified in Table 1 must only be constructed within the area for the work of which they form part as shown in the works plans.

(7) The details submitted for Work no.12 under sub-paragraph (1) may only include details for either Work no.12(c) or Work no.12(d), and must specify which of Work no. 12(c) or Work no.12(d) is to be developed.

(8) In so far as the details submitted under paragraph (1) relate to Work nos. 4, 6 and 7, the relevant planning authority must consult Network Rail on those details where the relevant works may impact Network Rail property and ensure:

- (a) in respect of Work no. 4, any part of that work is situated over 200 metres from Network Rail property;
- (b) in respect of Work no. 6, any part of that work is situated over 15 metres from Network Rail property; and
- (c) in respect of Work no. 7, any part of that work is situated over 15 metres from Network Rail property.

Code of construction practice

5.—(1) No part of the authorised development can commence until a code of construction practice for that part has been submitted to and approved by the relevant planning authority.

(2) The code of construction practice must be substantially in accordance with the outline code of construction practice and—

- (a) include relevant measures relied on in the environmental statement; and
- (b) include management plans, working methods and mitigation measures including—
 - (i) details of lighting during construction;
 - (ii) pollution incident control plan;
 - (iii) soil management strategy; and
 - (iv) dust management and monitoring plan.

(3) Construction of the authorised development must be carried out in accordance with the approved code of construction practice.

Construction traffic management plan

6.—(1) No part of the authorised development can commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority, Highways England, Network Rail, Port of Tilbury London Limited and Royal Mail.

(2) The construction traffic management plan must—

- (a) specify measures to manage the impacts of construction traffic during the construction works; and
 - (b) be substantially in accordance with the outline construction traffic management plan.
- (3) Construction works for the authorised development must be carried out in accordance with the approved construction traffic management plan for that part.

Construction worker travel plan

7.—(1) No part of the authorised development can commence until a construction worker travel plan for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority, Highways England, Network Rail and Port of Tilbury London Limited.

(2) The construction worker travel plan must be substantially in accordance with the outline construction worker travel plan.

(3) Construction works for the authorised development must be carried out in accordance with the approved construction worker travel plan for that part.

External lighting

8.—(1) No part of the authorised development where use of artificial lighting is proposed in operation can be externally lit between 18:00 and 07:00 until a scheme for the management and mitigation of artificial light emissions during the operation of that part of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme approved under sub-paragraph (1) must be implemented and maintained as approved during the operational phase.

Construction hours

9.—(1) Subject to sub-paragraph (2), no construction works are to take place except between—

- (a) 08:00 to 18:00 Monday to Friday; and
- (b) 08:00 to 13:00 on Saturday;

unless otherwise agreed by the relevant planning authority.

(2) The following works are permitted outside the hours referred to in sub-paragraph (1)—

- (a) works that cannot be interrupted or emergency works; and
- (b) works which do not cause noise that is more than 5dB above the pre-construction ambient noise at the nearest residential property to the Order limits, subject to lower cut-off values of 65dB, 55dB and 45dB LAeqT from site noise alone, for the daytime, evening and night-time periods, respectively, determined in accordance with Annex E of BS 5228-1:2009+A1:2014.

(3) Any emergency works carried out under sub-paragraph (2)(a) must be notified to the relevant planning authority within 72 hours of their commencement.

Surface and foul water drainage

10.—(1) No part of the authorised development can commence until written details for that part have been submitted to and approved by the relevant planning authority.

(2) The details submitted under sub-paragraph (1) must include—

- (a) the means of pollution control;

(b) connection points to existing drainage network with consideration to directing drainage away from the West Tilbury Main catchment; and

(c) ground raising and effects on the routing of flood waters.

(3) The details submitted under sub-paragraph (1) must be in accordance with the conceptual drainage strategy certified under article 38.

(4) The surface and foul water drainage system for the relevant part of the authorised development must be constructed and maintained in accordance with the approved details unless otherwise agreed in writing by the relevant planning authority.

Flood evacuation plan

11.—(1) The undertaker must, prior to the commencement of the authorised development, put in place a flood evacuation plan for the authorised development. The flood evacuation plan must be maintained and kept up to date throughout the operational life of the authorised development and be made available for inspection by all users of the site and displayed in a visible location at all times.

(2) A copy of the flood evacuation plan must be provided to the relevant planning authority or Thurrock Council acting as lead local flood authority on request.

Contaminated land

12.—(1) If contaminated land is found during permitted preliminary works or construction of the authorised development, no further development can be carried out in the affected area until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

(a) how the contaminated land is to be identified and assessed;

(b) where remediation is required by the scheme, the remediation measures;

(c) timescales for carrying out the remediation measures; and

(d) any ongoing monitoring or mitigation requirements.

(2) Any remediation measures, monitoring or mitigation requirements identified in the investigation and remediation scheme mentioned in sub-paragraph (1) must be carried out in accordance with the approved scheme.

Archaeology

13.—(1) No part of the authorised development with the potential to affect buried archaeological assets can commence until for that part a written scheme of archaeological investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority following consultation with Historic England.

(2) The scheme approved under sub-paragraph (1) must be substantially in accordance with the outline written scheme of archaeological investigation, and identify the measures to be taken to investigate, protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works must be carried out in accordance with the approved scheme.

Landscaping and ecological management plan

14.—(1) No part of the authorised development can commence until a LEMP for that part, substantially in accordance with the outline ecological management plan and illustrative landscape plan, including—

- (a) where necessary, measures to protect water voles;
- (b) ecological mitigation and enhancement measures;
- (c) details of all proposed soft landscaping works, including location, number, species, size and planting density of any proposed planting;
- (d) proposed finished ground levels;
- (e) details of existing trees to be retained, with measures for their protection during the construction period;
- (f) implementation timetables for all ecological and landscaping works; and
- (g) maintenance proposals,

has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) The authorised development, including maintenance, must be carried out in accordance with the approved LEMP and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

Construction compound restoration

15.—(1) Prior to the completion of construction of Work no.1, the undertaker must submit a plan to the relevant planning authority for approval detailing how all of the construction compound areas which do not form part of the permanent works will be restored, including—

- (a) details of the use and condition of the land before it was used as a construction compound;
- (b) proposed finished ground levels;
- (c) details of any soft landscaping works to be undertaken as part of the restoration;
- (d) details of any hard landscaping to be undertaken as part of the restoration including paving, surfacing, gates and fencing; and
- (e) implementation timetables for the restoration works.

(2) The restoration of the construction compounds must be carried out in accordance with the approved plan.

Operational noise

16.—(1) Between 23.00 and 07.00 hours, noise arising from normal operation of the site may not exceed a rating level of 45 dB $L_{A,T,r}$ at any residential property which is lawfully inhabited at the date of the making of this Order.

(2) The level set out in sub-paragraph (1) is to be as measured in accordance with British Standard 4142:2014+A1:2019 (Methods for rating and assessing industrial and commercial sound) and British Standard 7445-3:1991 (Description and measurement of environmental noise. Guide to application to noise limits) or any standards replacing those.

(3) Prior to the commencement of the authorised development, the undertaker must submit a plan to the relevant planning authority for approval detailing how noise monitoring will be undertaken during construction and within a six month period beginning with the date of first commercial export of electricity from Work no. 1A. That plan must specify a monitoring location point, which must

be in as close proximity as the undertaker can lawfully access, or at a point representative of, the nearest residential property which is lawfully inhabited at the date of the making of this Order.

(4) Noise monitoring must be undertaken by the undertaker in accordance with the plan approved under sub-paragraph (3); and the results of this monitoring must be submitted by the undertaker to the relevant planning authority at the intervals set out in the plan.

(5) Where the results of the monitoring undertaken in accordance with sub-paragraphs (3) and (4), show any exceedance of the level set out in sub-paragraph (1), the undertaker must, within 10 working days, submit to the relevant planning authority for approval a mitigation plan detailing how the exceedance will be mitigated and including a timetable for carrying out any works required to deliver such mitigation.

(6) The undertaker must comply with any plan approved under sub-paragraph (5).

Local employment and skills strategy

17. No part of the authorised development can commence until a local employment and skills strategy, substantially in accordance with the outline local employment and skills strategy has been submitted to and approved by the relevant planning authority.

Operational hours

18. Work no.1A (the gas fired electricity generating station) may only be operated for the purposes of generating electricity up to a maximum of 4,000 hours per calendar year.

Details to accord with Environmental Statement

19. Any plans, details, schemes or other documents which require approval by the discharging authority pursuant to any requirement must comply with the parameters set out in the Environmental Statement and, where applicable, the outline plans certified under article 38.

Carbon capture readiness

20. Until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—

- (a) dispose of any interest in the CCR area; or
- (b) do anything, or allow anything to be done or to occur,

which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare the carbon capture readiness land for the installation and operation of carbon capture equipment, should it be deemed necessary to do so.

Carbon capture readiness monitoring report

21.—(1) The undertaker must make a report ('carbon capture readiness monitoring report') to the Secretary of State—

- (a) no later than three months from the date of first commercial operation of Work no.1A (or any first phase thereof); and
- (b) within one month of the third anniversary, and each subsequent three year anniversary, of that date.

(2) Each carbon capture readiness monitoring report must provide evidence that the undertaker has complied with requirement 20—

Status: This is the original version (as it was originally made).

- (a) in the case of the first carbon capture readiness monitoring report, since commencement of the authorised development; and
 - (b) in the case of any subsequent report, since the making of the previous carbon capture readiness monitoring report, and explain how the undertaker expects to continue to comply with requirement 20 over the next three years.
- (3) Each carbon capture readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.
- (4) Each carbon capture readiness monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture readiness proposals.

Amendments to approved plans, etc.

22.—(1) With respect to any plans, details, schemes or other documents which require approval by the discharging authority pursuant to any requirement (the “approved plans”), the undertaker may submit to the discharging authority for approval any amendments to the approved plans and following any such approval by the discharging authority the approved plans are to be taken to include the amendments approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) must not be given except where it has been demonstrated to the satisfaction of the discharging authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects to those identified in the environmental statement.

Anticipatory steps

23. If before this Order comes into force the undertaker or any other person has taken any step in compliance with any requirement in Part 1 of this Schedule, that step may be taken into account to determine compliance with that requirement provided that step would have been a valid step for the purpose of the requirement if it had been taken after this Order came into force.

Submissions and approvals

24.—(1) Where, under any requirement, approval of any plans, details, schemes or other documents is required, the plan, details, scheme or other documents submitted for approval must be in writing.

(2) Where under any requirement the approval or agreement of the discharging authority or another person is required, that approval or agreement must be provided in writing.

(3) A copy of any approval or amendment to an approval issued under these requirements by a discharging authority other than the relevant planning authority must be copied to the relevant planning authority at the same time as it is issued to the undertaker.

PART 2

APPROVAL OF MATTERS SPECIFIED IN REQUIREMENTS

Applications made under requirements

25. Where an application has been made to the discharging authority for any agreement or approval required pursuant to a requirement included in this Order, the discharging authority must

give notice to the undertaker of their decision, including the reasons, on the application, within a period of 13 weeks beginning with—

- (a) the day immediately following that on which the application is received by the discharging authority; or
- (b) such longer period as may be agreed by the undertaker and the discharging authority.

Further information

26.—(1) Where an application has been made under paragraph 25 the discharging authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 21 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement indicates that consultation must take place with a consultee the discharging authority must issue the consultation to the requirement consultee within 5 working days of receipt of the application. Where the consultee requires further information they must notify the discharging authority in writing specifying the further information required within 21 days of receipt of the consultation. The discharging authority must notify the undertaker in writing specifying any further information requested by the consultee within 5 working days of receipt of such a request.

(4) In the event that the discharging authority does not give such notification as specified in subparagraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Provision of information by Consultees

27.—(1) Any consultee who receives a consultation under paragraph 26(3) must respond to that request within 28 days from receipt unless sub paragraph (2) of this paragraph applies.

(2) Where any consultee requests further information in accordance with the timescales set out in paragraph 26(3) then they must respond to the consultation within 10 working days from the receipt of the further information requested.

Fees

28.—(1) Where an application is made to the discharging authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012⁽⁴⁸⁾ (or any regulations replacing the same) is to be paid by the undertaker to the discharging authority in accordance with these regulations.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of the application being rejected as invalidly made.

Appeal

29.—(1) The undertaker may appeal in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions; or

(48) [S.I. 2012/2920](#).

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- (b) the discharging authority does not give notice of its decision to the undertaker within the time period specified in paragraph 25.
- (2) The appeal process is to be as follows—
- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
 - (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person (“the appointed person”) to determine the appeal and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
 - (c) the relevant planning authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within ten working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
 - (d) the appeal parties must make any counter-submissions to the appointed person within ten working days of receipt of written representations pursuant to sub-paragraph (2)(c); and
 - (e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (2)(d).
- (3) The appointment of the person pursuant to sub-paragraph (2)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (4) In the event that the appointed person considers that further information is necessary to consider the appeal, the appointed person must notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must make any notification and set the date for the receipt of such further information having regard to the timescales in sub-paragraph (2).
- (5) Any further information required under sub-paragraph (4) must be provided by the appeal party from whom the further information was requested to the appointed person and other appeal parties, the relevant planning authority and any consultee required to be consulted pursuant to the requirement the subject of the appeal on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten working days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e).
- (6) On an appeal under this sub-paragraph, the appointed person may—
- (a) allow or dismiss the appeal; or
 - (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not).
- (7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.
- (8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this article, it is to be deemed to be an approval for the purpose of Schedule 2 as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Documents

30.—(1) The undertaker must amend the land plans and special category land plans (document number A2.2) and the book of reference (document number A4.3) in order to—

- (a) on the land plans and special category land plans, remove the colouring of plots in ownership of the Port of Tilbury London Limited and RWE; and
- (b) in the book of reference delete the plots in the ownership of the Port of Tilbury London Limited and RWE.

(2) Under paragraph (1), the plots concerned are—

- (a) plots in ownership of the Port of Tilbury London Limited: 01/04, 01/33, 01/35, 01/36, 05/01, 05/02, 05/03, 05/04 and 05/07; and
- (b) plots in ownership of RWE: 01/04, 01/11, 01/19, 01/20, 01/21, 01/22, 01/28, 01/30, 01/31, 01/32, 01/34 01/37, 04/01, 04/03 and 04/05.

(3) The undertaker must submit the land plans and special category land plans and the book of reference, as amended, to the Secretary of State for approval.

(4) The undertaker must not commence work under this Order, or exercise any powers under the Order, until the Secretary of State has given such approval.

SCHEDULE 3

Article 15

TRAFFIC REGULATION SUSPENSION OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Extent of suspension</i>
Thurrock Borough	Station Road	The Borough of Thurrock (Station Road (Love Lane to Princess Margaret Road) East Tilbury)	Suspended between Love Lane and Princess Margaret Road.

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name</i>	<i>(3)</i> <i>Title of Order</i> (Weight Restriction) Order 1995.	<i>(4)</i> <i>Extent of suspension</i>

SCHEDULE 4

Article 13

HIGHWAYS SUBJECT TO TEMPORARY CONTROL OR RESTRICTION

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Control or Restriction</i>
Thurrock Borough	Station Road within the two areas shown hatched in red on sheet 3 of the access, rights of way and traffic management plans.	Controls on use including marshalling during construction to allow crossing of the highway for construction access. Temporary restriction on all use for up to two weeks at each location, concurrently or consecutively.
Thurrock Borough	Station Road within the area shown hatched in dark green on sheet 3 of the access, rights of way and traffic management plans.	Controls on use including temporary restrictions on use and partial carriageway closures with traffic management to allow construction of new accesses.
Thurrock Borough	Footpath through common land connecting Footpath 200 at the location shown hatched in green on sheet 3 of the access, rights of way and traffic management plans.	Controls on use the footpath where it crosses the pipeline route including marshalling during construction and operation to allow installation and maintenance of a gas pipeline. Temporary restriction on all use and diversion during construction.

SCHEDULE 5

Articles 22 and 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
AND IN WHICH ONLY RIGHTS ETC MAY BE ACQUIRED

<i>(1)</i> <i>Plot reference number shown on land plans</i>	<i>(2)</i> <i>Rights over land which may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development for which temporary possession for construction can be taken</i>
Land Plans – Sheet 1		
01/09	Right to install, use, protect, retain, inspect, maintain, repair and replace electrical cables and associated infrastructure and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of electrical cables and associated infrastructure installed in the land.	Work no.3
01/10	Right to install, use, protect, retain, inspect, maintain, repair and replace electrical cables and associated infrastructure and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of electrical cables and associated infrastructure installed in the land.	Work no.3
01/14	Right of access, including vehicular access, to create and maintain replacement common land.	Work no.14
01/15	Right to install, use, protect, retain, inspect, maintain, repair and replace electrical cables and associated infrastructure and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of electrical cables and associated infrastructure installed in the land.	Work no.3
01/25	Right to install, use, protect, retain, inspect, maintain, repair	Work nos.4 and 8

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Plot reference number shown on land plans</i>	<i>(2)</i> <i>Rights over land which may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development for which temporary possession for construction can be taken</i>
	and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	
Land Plans – Sheet 2		
02/01	Right of access, including vehicular access, to create and maintain habitat creation and enhancement land.	Work no.2
02/02	Right of access, including vehicular access, to create and maintain habitat creation and enhancement land.	Work no.2
02/04	Right of access, including vehicular access, to create and maintain replacement common land.	Work no.14
02/08	Right of access, including vehicular access, to create and maintain replacement common land.	Work no.14
02/09	Right of access, including vehicular access, to create and maintain replacement common land.	Work no.14
02/10	Right of access, including vehicular access, to create and maintain replacement common land and habitat creation and enhancement land, and to use, repair, improve or alter existing accesses, tracks, roads or ways.	Work nos.2 and 14
02/11	Right of access, including vehicular access, to create and maintain replacement common land and habitat creation and enhancement land, and to use,	Work nos.2 and 14

<i>(1)</i> <i>Plot reference number shown on land plans</i>	<i>(2)</i> <i>Rights over land which may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development for which temporary possession for construction can be taken</i>
	repair, improve or alter existing accesses, tracks, roads or ways.	
02/13	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work nos.4 and 8
Land Plans – Sheet 3		
03/01	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work nos.4 and 8
03/02	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work no.4
03/03	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work no.4

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Plot reference number shown on land plans</i>	<i>(2)</i> <i>Rights over land which may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development for which temporary possession for construction can be taken</i>
03/04	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work no.4
03/05	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work no.4
03/06	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work no.4
03/08	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work no.4
03/09	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure,	Work no.4

<i>(1)</i> <i>Plot reference number shown on land plans</i>	<i>(2)</i> <i>Rights over land which may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development for which temporary possession for construction can be taken</i>
	and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	

SCHEDULE 6

Article 28

LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plot Reference Number shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 3			
Road forming public highway and private road shown coloured yellow on the access, rights of way and traffic management plans	03/07	To allow a temporary diversion of a public right of way.	Work no.4
Station Road, Public Highway at Station Road, East Tilbury	03/10	To create a new access from the public highway including temporary partial closure of the highway and traffic management.	Work nos.4 and 5
Land Plans – Sheet 5			
Fort Road, public highway at Fort Road, Tilbury	05/06	To allow the creation of a new access from the public highway including temporary partial closure of the highway and traffic management.	Work no.15

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plot Reference Number shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Fort Road, public highway at Fort Road, Tilbury	05/08	To allow the creation of a new access from the public highway including temporary partial closure of the highway and traffic management.	Work no.15

SCHEDULE 7

Article 22

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS
FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

2. Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification—

For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 4(5) of Schedule 7 to the Thurrock Flexible Generation Plant Development Consent Order 2022 (the “Thurrock Flexible Generation Plant Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 4(8) of Schedule 7 to the Thurrock Flexible Generation Plant Development Consent Order 2022) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(49) has effect subject to the modifications set out in sub-paragraph (2).

(49) 1973 c. 26.

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 4(3) of this Schedule—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Application of Part 1 of the 1965 Act

4.—(1) Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and modified by article 26 (application of Part 1 of the 1965 Act) to the acquisition of land under article 19 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 22 (compulsory acquisition of rights)—

- (a) with the modifications specified in sub-paragraph (2); and
- (b) with such other modifications as may be necessary.

(2) The modifications referred to in sub-paragraph (1) are as follows: references in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(50)

(50) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

Status: This is the original version (as it was originally made).

(powers of entry: further notices of entry), 11B(51) (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 26(2) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A

Section 8

COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the 1981 Act) of the Thurrock Flexible Generation Plant Development Consent Order 2022 in respect of the land to which the notice to treat relates.

(2) But see article 25 (acquisition of subsoil only) of the Thurrock Flexible Generation Plant Development Consent Order 2022 which excludes the acquisition of subsoil only from this Schedule.

(3) In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

2. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

3. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

4. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

5. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

(51) Section 11B was inserted by section 187(2) of the above Act.

6. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

7. If the authority do not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

8. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by the Upper Tribunal

9. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

10. In making the determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant;
- (b) the use to be made of the right or covenant proposed to be acquired or imposed; and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

11. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 9, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

12. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

14. Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 8

Article 36

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY,
GAS, WATER AND SEWAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory duty in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989⁽⁵²⁾), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽⁵³⁾ for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991⁽⁵⁴⁾; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at future date) of that Act⁽⁵⁵⁾,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

⁽⁵²⁾ 1989 c. 29.

⁽⁵³⁾ 1986 c. 44.

⁽⁵⁴⁾ 1991 c. 56.

⁽⁵⁵⁾ Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c. 29).

- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
 - (c) a water undertaker within the meaning of Part 2 of the Water Industry Act 1991; and
 - (d) a sewerage undertaker within the meaning of Part 2 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

Land not affected by this Part

3.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) This Part of this Schedule does not apply to any apparatus belonging to National Grid as defined in Part 4 of this Schedule.

Apparatus in restricted streets

4. Regardless of the temporary restriction of any highway under the powers conferred by article 13 (temporary restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

Status: This is the original version (as it was originally made).

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written

notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42(arbitration) to be necessary then, if such placing involves cost exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

Status: This is the original version (as it was originally made).

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 6(1) or 6(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

11. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 6(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

12. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

Provision for Anglian Water Services Limited

13. Nothing in this Part of this Schedule applies to Anglian Water Services Limited.

PART 2

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

1. For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

2. In this Part—

“Anglian Water” means Anglian Water Services Limited (company number 02366656);

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and

(a) any drain works vested in Anglian Water under the Water Industry Act 1991;

(b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

3. The undertaker may not interfere with, build over or near to any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25 metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

4. The alteration, extension, removal or re-location of any apparatus may not be implemented until—

(a) any requirement for any permits under the part 2 of the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and

(b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

Status: This is the original version (as it was originally made).

5. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquired any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way no alteration or extension may take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

6. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker will, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 42(arbitration).

7. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

8. If in consequence of the exercise of the powers conferred by this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

9. If for any reason or in consequence of the construction of any of the works referred to in paragraphs (4) to (6) and (8) above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water, by reason or in consequence of any such damage interruption.

10. Notwithstanding the provisions of article 16(2), for any sewer or drain which forms part of the statutory undertaking of Anglian Water, any dispute will not be treated as a dispute under s106 of the Water Industry Act 1991, but will be settled by arbitration in accordance with article 42 (arbitration).

11. Where the detailed design for any part of the authorised development includes any proposal to interact with, connect to or interfere with any asset belonging to Anglian Water, the undertaker must consult Anglian Water on the proposed design before it is submitted for approval under requirement 4 of Schedule 2. The undertaker must have regard to any response to consultation provided by Anglian Water and must include a copy of any response within the submission seeking approval of the detailed design.

PART 3

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003⁽⁵⁶⁾;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

“operator” means the operator of an electronic communications code network.

3. The exercise of the powers conferred by article 30 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

4.—(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

5. This Part of this Schedule does not apply to—

⁽⁵⁶⁾ 2003 c. 21.

Status: This is the original version (as it was originally made).

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

6. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 4

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1. The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

2. In this part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes executing, placing, altering, replacing, relaying and removal and excavating and “construct” and “constructed” are to be construed accordingly;

“drainage work” means (i) any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring and (ii) any sea defence;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

“plans” includes sections, drawings, specifications, calculations and method statements;

“sea defence” means any bank, wall, embankment (and any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency’s area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority;

“specified work” means—

- (a) so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a main river or is otherwise likely to—
 - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
 - (ii) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
 - (iii) cause obstruction to the free passage of fish or damage to any fishery;
 - (iv) affect the conservation, distribution or use of water resources; or

- (v) affect the conservation value of the main river and habitats in its immediate vicinity;
- (b) so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a sea defence which is likely to endanger the stability of, cause damage to or reduce the effectiveness of that sea defence, or interfere with the Agency's access to or along that sea defence; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 12.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) If the Agency refuses any approval required under this paragraph then the refusal must be accompanied by a statement of the grounds for refusal.

4. Without limiting paragraph 3 but subject always to the provisions of that paragraph as to reasonableness, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

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(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6), if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 12.

6.—(1) Subject to sub-paragraph (6), the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order Land and on land possessed by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is reasonably necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing are recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 12.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

7. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in so doing from the undertaker.

8. If by reason of construction of a specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

9.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in a fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing are recoverable from the undertaker.

(4) Subject to paragraph 11, in any case where immediate action by the Agency is reasonably required in an emergency in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

10. The undertaker shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

11.—(1) The undertaker is responsible for and shall indemnify the Agency against all costs and losses not otherwise provided for in this Schedule which may be incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised works or the failure of any such works comprised within them; or

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- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised works or dealing with any failure of the authorised works.
 - (2) For the avoidance of doubt, in sub-paragraph (1)—
 - “costs” includes—expenses and charges; staff costs and overheads; and legal costs; and
 - “losses” includes physical damage.
 - (3) The undertaker shall indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).
 - (4) For the avoidance of doubt, in sub-paragraph (3)—
 - “claims” and “demands” include as applicable—
 - (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
 - (b) any interest element of sums claimed or demanded;
 - “liabilities” includes—
 - (a) contractual liabilities;
 - (b) tortious liabilities (including liabilities for negligence or nuisance);
 - (c) liabilities to pay statutory compensation or for breach of statutory duty; and
 - (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).
 - (5) The Agency must give to the undertaker reasonable written notice of any such claim or demand as is referred to in sub-paragraph (3) as soon as reasonably practicable after it becomes aware of such claim or demand, and no settlement or compromise of any such claim or demand is to be made without the prior agreement of the Undertaker which agreement may not be unreasonably withheld or delayed.
 - (6) The fact that any work or thing has been executed or done by the Undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Undertaker from any liability under the provisions of this Part of this Schedule.
 - (7) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.
- 12.** Any dispute arising between the undertaker and the Agency under this part of this Schedule will, be determined by arbitration under article 42 (arbitration) unless otherwise agreed in writing by the undertaker and the Agency.

PART 5

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

1.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

Interpretation

2. In this Part of this Schedule—

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

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) any electric lines or electrical plant as defined in the Electricity Act 1989⁽⁵⁷⁾, belonging to or maintained by National Grid;
- (b) any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities

(57) 1989 c. 29.

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and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means—

- (a) National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) National Grid Gas plc (company number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽⁵⁸⁾;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus, “Specification for safe working in the vicinity of National Grid, High Pressure Gas pipelines and associated installations- requirements for third parties” and/or activity that is referred to in National Grid’s document “Development near overhead lines” and the Health and Safety Executive’s (HSE) Guidance Note GS6 “Avoiding Danger from Overhead Power Lines”;

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (Apparatus of statutory undertakers in temporarily restricted streets), 8 (retained apparatus: protection of electricity undertaker), 9 (retained apparatus: protection of gas undertaker), and 10 (expenses) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

(58) 1986 c. 44.

Apparatus of statutory undertakers in temporarily restricted streets

4. Despite the temporary stopping up or diversion of any highway under article 13 (temporary restriction of use of streets), National Grid may at all times take all necessary access across any such highway and execute and do all such works and things in, on or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction or diversion was in that highway.

Acquisition of land

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 8 or 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must,

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subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 7(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 14 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works,

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inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grids' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Retained apparatus: protection of gas undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Expenses

10.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

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- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 6(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
 - (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
 - (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (d) the approval of plans;
 - (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
 - (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.
- (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part of this Schedule—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
 - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 14 (*Arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.
- (4) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
 - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.
- (5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Enactments and agreements

11. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

12.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 6(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 8 or 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

13. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1), 8 and 9 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (*arbitration*).

Notices

15. Notwithstanding article 39 (*service of notices*), any plans submitted to National Grid by the undertaker pursuant to this Part must be sent to Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF NETWORK RAIL

Part to have effect unless otherwise agreed

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail, and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

Interpretation**2.** In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993⁽⁵⁹⁾;

“Network Rail” has the same meaning as given in Schedule 2, Part 1 of this Order;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“promoter” means the undertaker as defined in article 2 (interpretation) of this Order;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail within the Order limits and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the promoter with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The promoter must not exercise the powers conferred by—

- (a) article 16 (discharge of water);
- (b) article 17 (authority to survey and investigate the land);
- (c) article 19 (compulsory acquisition of land);
- (d) article 22 (compulsory acquisition of rights);
- (e) article 25 (acquisition of subsoil only);
- (f) article 28 (temporary use of land for carrying out the authorised development);

(59) 1993 c. 43.

- (g) article 29 (temporary use of land for maintaining the authorised development);
- (h) article 30 (statutory undertakers);
- (i) article 35 (felling or lopping of trees and removal of hedgerows);
- (j) or the powers conferred by section 11(3) of the 1965 Act,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The promoter must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The promoter must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 30 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The promoter must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The promoter must, before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the promoter may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the promoter. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the promoter that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the promoter desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the promoter in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the promoter.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the promoter, if Network Rail so desires, and such protective works must be carried out at the expense of the promoter in either case with all reasonable dispatch and the promoter must not commence the construction of

the specified works until the engineer has notified the promoter that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the promoter must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the promoter with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the promoter or its servants, contractors or agents.

7. The promoter must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the promoter and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the promoter with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the promoter reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the promoter must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the promoter, Network Rail gives notice to the promoter that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the promoter decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the promoter must, notwithstanding any such approval of a specified work under paragraph 5(3),

pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the promoter may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the promoter to Network Rail under this paragraph.

10. The promoter must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the promoter as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the promoter and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

- (a) “EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and
- (b) “Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the promoter has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the promoter must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the promoter’s compliance with sub-paragraph (3)—

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- (a) the promoter must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
 - (b) Network Rail must make available to the promoter all information in the possession of Network Rail reasonably requested by the promoter in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
 - (c) Network Rail must allow the promoter reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).
- (5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) have effect subject to the sub-paragraph.
- (6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the promoter must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the promoter's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.
- (7) In the event of EMI having occurred—
- (a) the promoter must afford reasonable facilities to Network Rail for access to the promoter's apparatus in the investigation of such EMI;
 - (b) Network Rail must afford reasonable facilities to the promoter for access to Network Rail's apparatus in the investigation of such EMI; and
 - (c) Network Rail must make available to the promoter any additional material information in its possession reasonably requested by the promoter in respect of Network Rail's apparatus or such EMI.
- (8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6)—
- (a) Network Rail must allow the promoter reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
 - (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the promoter in accordance with paragraph 6.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.
- (10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph is deemed to be protective works referred to in that paragraph.
- 12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the promoter informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property,

the promoter must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The promoter must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the promoter, be repaid by the promoter to Network Rail.

15.—(1) The promoter must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 40 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the promoter or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the promoter must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the promoter or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the promoter from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the promoter reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the promoter.

(3) The sums payable by the promoter under sub-paragraph (1) may if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the promoter, from time to time provide the promoter free of charge with written estimates of the costs, charges, expenses and other liabilities for which the promoter is or will become liable under this Schedule (including the amount of the

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relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the promoter to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the promoter under this Schedule or increasing the sums so payable.

18. The promoter and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the promoter of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

20. The promoter must give written notice to Network Rail if any application is proposed to be made by the promoter for the Secretary of State's consent, under article 8 (Consent to transfer of benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The promoter must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 7

FOR THE PROTECTION OF PORT OF TILBURY LONDON LIMITED

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Port of Tilbury London Limited.

2. In this Part of this Schedule

“the affected highways” means the A1089 St Andrews Road, Ferry Road, Fort Road and the unnamed link road between Fort Road and the A1089 St Andrews Road;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements, traffic management measures, vehicle movement profiles and hydraulic information including, but not limited to, information as to the intended discharge of water and materials within the Port;

“the Port” means any land (including land covered by water) within the Port of Tilbury which is owned or used by Port of Tilbury London Limited as at the date of the Order, and specifically

including the private highways and access roads within the Port, and includes the Work no.15 land;

“specified work” means any work, activity or operation authorised by this Order and their associated traffic movements which may affect—

- (a) the Port;
- (b) access to and from premises within the Port;
- (c) streets within the Port;
- (d) navigation within the Port; and
- (e) the functions of Port of Tilbury London Limited as the statutory harbour authority for the port;

and specifically includes, but is not limited to, the exercise of the powers conferred by articles 3 (Development consent etc. granted by the Order), 11 (Street works), 12 (Application of the 1991 Act), 13 (Temporary restriction of use of streets), 14 (Access to works), 15 (Traffic regulation), 16 (Discharge of water), and 35 (Felling or lopping of trees and removal of hedgerows) of the Order; and

“street” has the same meaning as in the 1991 Act.

3. The undertaker must not exercise the powers conferred by articles 17 (authority to survey and investigate the land), 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 25 (acquisition of subsoil only), 27 (rights under or over streets), 28 (temporary use of land for carrying out the authorised development), 29 (temporary use of land for maintaining the authorised development) and 30 (statutory undertakers) in respect of the Port unless the exercise of such powers is with the consent of Port of Tilbury London Limited, such consent not to be unreasonably withheld.

4.—(1) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to the Port, unless preventing such access is with the consent of Port of Tilbury London Limited.

(2) The undertaker must notify Port of Tilbury London Limited prior to exercising its powers conferred by articles 11 (street works) or 13 (temporary restriction of use of streets) in respect of any of the affected highways. Notification under this sub-paragraph will be effected by the undertaker sending to Port of Tilbury London Limited a copy of the documents seeking consent to or approval of the works or measures under those articles at the time as they are submitted to the relevant street authority for such consent or approval. The undertaker must also forward to Port of Tilbury London Limited a copy of any response received by the undertaker from the relevant street authority in response to any such submission for consent or approval under those articles.

(3) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus under articles 17, 18, 19, 22, 25, 27, 28, 29 or 30 enter on any land, acquire any land interest or apparatus or override any easement or other interest of Port of Tilbury London Limited otherwise than by agreement.

(4) Articles 20 and 23 do not apply to the Port and any interests or rights held by Port of Tilbury London Limited unless otherwise agreed by Port of Tilbury London Limited, acting reasonably.

(5) Regardless of any provision in this Order and in particular article 37 (Operational land for the purposes of the 1990 Act), no part of the Port or streets within the Port will become operational land of the undertaker, and nothing under this Order will affect the status of the land in so far as it forms operational land of Port of Tilbury London Limited.

(6) Article 41 (Application of landlord and tenant law) does not apply to any agreement entered into between the undertaker and Port of Tilbury London Limited in relation to the authorised development and/or the Port.

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(7) In so far as it applies within the Port, the Applicant may not transfer the benefit of the Order under article 8 (Consent to transfer benefit of Order), without the consent of Port of Tilbury London Limited, which consent may not be unreasonably withheld.

5.—(1) At least 56 days before commencing the carrying out or maintenance of any specified work, the undertaker must submit to Port of Tilbury London Limited plans of that work for its approval.

(2) Any approval of Port of Tilbury London Limited under this paragraph—

- (a) must not be unreasonably withheld;
- (b) may be given subject to such reasonable requirements, conditions or restrictions as Port of Tilbury London Limited may make for the protection of the Port and navigation within the Port, including a requirement for the undertaker to carry out protective works at its own expense; and
- (c) must not restrict the powers granted to the undertaker by this Order where such powers do not affect the Port.

(3) The undertaker must carry out any specified work and any protective works required under sub-paragraph (2)(b) in accordance with the plans approved under sub-paragraph (1) or settled under paragraph 14 of this Part of this Schedule.

(4) The undertaker must inform Port of Tilbury London Limited in writing of the intended start date and the likely duration of the carrying out of any specified work at least 30 working days prior to the commencement of the specified work.

6. In exercising the powers conferred by the Order in relation to the affected highways or any street through the Port, the undertaker must have regard to the potential disruption, delay or congestion of traffic which may be caused, and seek to minimise such disruption, delay or congestion so far as is reasonably practicable. The undertaker must not at any time prevent or unreasonably impede access by emergency services vehicles to the Port.

7.—(1) Where the undertaker carries out any works to any street within the Port it must make good any defects in those works notified to it by Port of Tilbury London Limited within the period of three months after the date of its removal from occupation of that area of street.

(2) The undertaker may, at its sole discretion and in place of carrying out any works to remedy any defects under sub-paragraph (1), pay to Port of Tilbury London Limited a sum equal to the cost to Port of Tilbury London Limited of carrying out the required works as calculated by Port of Tilbury London Limited, acting reasonably.

(3) Where any event or accident on or affecting any road, street, way or the river Thames, prevents or obstructs access into, out of or within the Port, which event or accident is caused by or attributable to the undertaker, its agents or contractors, or which requires the removal of any item, vessel or vehicle which is preventing or obstructing access and which is owned by, contracted to or otherwise being used on behalf of the undertaker, the undertaker must use its best endeavours to reinstate access or remove the obstruction as soon as practicable.

(4) Port of Tilbury London Limited may, where an obstruction has occurred and has not been removed by the undertaker on request by Port of Tilbury London Limited, remove the obstruction itself and repair any damage caused by the event or accident causing the obstruction.

8. Any person duly appointed by Port of Tilbury London Limited for this purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of a specified work; and the undertaker must give to such person all reasonable facilities for such inspection and, if the duly appointed person is of the opinion that the construction of the work poses danger to any property of the Port or person within the Port,

the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury.

9.—(1) Port of Tilbury London Limited may at any time close the Port and exclude access by the undertaker (including access under any power granted by this Order, under any access right howsoever acquired and as provided for in any agreement between the undertaker and Port of Tilbury London Limited) where Port of Tilbury London Limited reasonably considers that it is necessary to do so in response to a request from an emergency service or government agency, any emergency or accident, or an imminent threat to the health or safety of persons or of damage to property.

(2) Port of Tilbury London Limited must inform the undertaker of any closure of the Port as soon as reasonably practicable, including details of the location and extent of the closure and where known, the anticipated duration of the closure.

10.—(1) The undertaker is to be responsible for, and must make good to Port of Tilbury London Limited all losses, costs, charges, damages, expenses, claims and demands however caused, which may reasonably be incurred or occasioned to Port of Tilbury London Limited by reason or arising in connection with—

- (a) the perusal of plans of any specified work, and the inspection of a specified work;
- (b) where the undertaker has not reinstated access or removed an obstruction the costs, expenses and losses of Port of Tilbury London Limited incurred in removing the obstruction itself and repairing any damage caused by the event or accident causing the obstruction;
- (c) the construction, maintenance or failure of a specified work, or damage to the Port arising from such construction, maintenance or failure, including but not limited to—
 - (i) *Not used*;
 - (ii) damage to any, street, plant, equipment or building belonging to Port of Tilbury London Limited that is caused by the construction, maintenance or failure of a specified work; and
 - (iii) any act or omission of the undertaker or its servants and agents while engaged in the construction, maintenance or use of a specified work.

(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify Port of Tilbury London Limited from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) are attributable to negligence on the part of Port of Tilbury London Limited or of any person in its employ or of its contractors.

(4) Port of Tilbury London Limited must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

11. The fact that any work or thing has been executed or done with the consent of Port of Tilbury London Limited and in accordance with any conditions or restrictions prescribed by Port of Tilbury London Limited or in accordance with any plans approved or deemed to be approved by Port of Tilbury London Limited under this Part of this Schedule or under Schedule 2 to this Order or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under the provisions of this Part.

Status: This is the original version (as it was originally made).

12. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, Port of Tilbury London Limited at the date of this Order coming into force.

13. With the exception of any duty owed by Port of Tilbury London Limited to the undertaker, nothing in this Order is to be construed as imposing upon Port of Tilbury London Limited any duty or liability to which Port of Tilbury London Limited would not otherwise be subject.

14.—(1) Any difference arising between the undertaker and Port of Tilbury London Limited under this Part of this Schedule (other than any difference as to the meaning or construction of this Part of this Schedule) will be resolved by expert determination.

(2) The undertaker and Port of Tilbury London Limited will agree on the appointment of the expert and will agree with the expert the terms of their appointment.

(3) If the undertaker and Port of Tilbury London Limited are unable to agree on an expert or the terms of their appointment within seven days of either party serving details of a suggested expert on the other, either party will then be entitled to request the President of the Institution of Civil Engineers to appoint an expert of repute with no less than 15 years' experience in the relevant matter, and to agree with the expert the terms of appointment.

(4) The expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of two months of the matter being referred to the expert.

(5) The expert will act as an expert and not as an arbitrator. The expert's written decision on the matters referred to them is final and binding on the parties in the absence of manifest error or fraud.

(6) The expert's fees, any costs properly incurred by them in arriving at their determination and the costs incurred by the parties under this paragraph will be borne by the parties equally or in such other proportions as the expert may direct.

15. The undertaker must give written notice to Port of Tilbury London Limited if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (Consent to transfer of benefit of Order) of this Order, and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

PART 8

FOR THE PROTECTION OF HIGHWAYS ENGLAND COMPANY LIMITED

Application

1. The provisions of this Part of this Schedule apply for the protection of Highways England and have effect unless otherwise agreed in writing between the undertaker and Highways England.

Interpretation

2. In this Schedule "strategic road network" means any part of the road network including trunk roads, special roads or streets for which Highways England is the highway authority.

Approvals

3. Any approval of Highways England under this Order may be given subject to such reasonable requirements or conditions as Highways England may make for the protection of the strategic road network.

Construction of the authorised development

4.—(1) The undertaker must comply with Highways England’s road space booking procedures (in accordance with Highways England’s Asset Management Operational Requirements including Network Occupancy Management System used to manage road space bookings and network occupancy) prior to exercising a power under article 13 or article 15 of this Order in relation to the strategic road network and no power for which a road space booking is required shall be exercised without a road space booking having first been secured.

(2) Following any closure or partial closure of any part of the strategic road network for the purposes of carrying out the authorised development, the undertaker must give Highways England the opportunity to carry out a site inspection in order for Highways England to satisfy itself that that part of the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of Highways England prior to reopening that part of the strategic road network.

(3) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

Payments

5.—(1) The undertaker must pay to Highways England a sum equal to the whole of any costs and expenses which Highways England incurs (including costs and expenses for using internal or external staff) in relation to approvals and/or consultation sought under articles 13 and 15 of this Order including—

- (a) the checking and approval of the information required to determine approvals under articles 13 and 15;
- (b) all legal and administrative costs in relation to (a) above;
- (c) any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(2) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) Highways England must consult the undertaker on any traffic regulation order proposed under sub-paragraph (2) prior to work commencing on any statutory procedure or preparation, including providing the undertaker with an explanation of why Highways England considers that the order is necessary to carry out or for effectively implementing the authorised development.

(4) Highways England must give the undertaker a final account of the costs referred to in sub-paragraph (1) above within 91 days of the issue of Highways England’s determination of an approval sought under article 13 or article 15.

(5) Within 28 days of the issue of the final account—

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- (a) if the final account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by Highways England, Highways England must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Interaction with the Lower Thames Crossing

6.—(1) The undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Lower Thames Crossing. For the purposes of this sub-paragraph—

- (a) “conflict” does not include any overlap in the land to be occupied or developed by the undertaker and the Lower Thames Crossing or any overlap in the Order Limits and application of compulsory powers under this Order and any order granted for the Lower Thames Crossing, or any difference between anything required by a requirement of any order granted after the date of the making of this Order for the construction and operation of the Lower Thames Crossing and the provisions of this Order;
- (b) “reasonable endeavours” means—
 - (i) undertaking consultation with Highways England on detailed design and programming of works for the authorised development so that the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the Lower Thames Crossing;
 - (ii) having regard to the anticipated programme of works for the Lower Thames Crossing and any reasonable requirements of Highways England as regards any works to be undertaken on Work no. 4 within the area where the Lower Thames Crossing main highway is to be constructed;
 - (iii) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and
 - (iv) complying with sub-paragraph (2) below,

and may include seeking approval of an amendment of any document or plan approved under a requirement for any Work where construction of that Work has not been commenced by the undertaker, but does not include the undertaker being required to seek any amendment to or variation of this Order or delay programme critical works once the authorised development has commenced.

- (2) The undertaker must co-operate with Highways England so as to reasonably ensure—
 - (a) the co-ordination of construction programming, land assembly, and the carrying out of works in connection with the authorised development and the Lower Thames Crossing;
 - (b) that, notwithstanding any provision of this Order and subject to reasonable notice being provided by Highways England, access to the Order land including secure working areas for the purposes of constructing the Lower Thames Crossing is not removed, prevented or prohibited by the undertaker for Highways England and its agents and/or contractors, including at—
 - (i) Station Road which is in the vicinity of plot 03/05 of the Land Plans;

- (ii) Substation Road which is in the vicinity of plots 01/27, 01/28, 01/29, 04/01, 04/03, 04/05 and 04/06 of the Land Plans;
 - (iii) Walton Common; and
 - (iv) Tilbury Green common land and Footpath 200.
- (3) Without limitation to the generality of sub-paragraphs (1) and (2)—
- (a) Work no. 4 must, unless otherwise agreed with Highways England, be constructed so that jointing blocks are installed at locations which are reasonably convenient to enable a diversion which does not conflict with the Lower Thames Crossing; and
 - (b) the undertaker must not discharge water or any other samples or materials to the Bowaters sluice (in the vicinity of plot 01/24 of the Land Plans) unless otherwise agreed with Highways England.
- (4) The undertaker must as soon as is reasonably practicable provide Highways England with—
- (a) as built drawings in connection with Works nos. 2, 4, 6, 7, 12(a) and 12(d) following the completion of those works; and
 - (b) in relation to Walton Common—
 - (i) a copy of the application for certification under article 33(1);
 - (ii) confirmation that the local planning authority has certified or has refused to certify the application referred to in sub-paragraph (i);
 - (iii) a copy of the application to amend the register of common land made under article 33(3);
 - (iv) confirmation that the register of common land has been amended following an application referred to in sub-paragraph (iii); or
 - (v) details of any application made to deregister that common land and any determination of such an application under the Commons Act 2006.
- (5) In this paragraph “Lower Thames Crossing” means the project which comprises a new road connecting Kent, Thurrock and Essex through a tunnel beneath the river Thames as well as improvements to the M25, A2 and A13, which is being promoted by Highways England and is proposed to be consented under section 22 of the 2008 Act.

Expert determination

- 7.—(1) Article 42(*arbitration*) of the Order does not apply to this Part of this Schedule.
- (2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.
- (3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.
- (4) The expert must—
- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;
 - (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;

- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

PART 9

FOR THE PROTECTION OF RWE GENERATION (UK) Plc

1. The provisions of this part of this Schedule have effect for the protection of RWE unless otherwise agreed in writing between the undertaker and RWE.

2.—(1) In this Part of this Schedule—

“the road” means the existing road owned by RWE which runs through the site shown as plots 01/04, 01/11, 01/19, 01/20, 01/21, 01/22, 01/30, 04/01, 04/03, 04/05 and 04/06 on sheets 1 and 4 of the Land Plans;

“the proposed road” means an access road for abnormal indivisible loads which runs through the site shown as plots 01/04, 01/11, 01/33, 01/34, 01/35, 01/36, 01/37, 05/01, 05/02, 05/03, 05/04, 05/05, 05/06, 05/07 and 05/08, on sheets 1 and 5 of the Land Plans;

“existing apparatus” means any pipes, cables, drainage systems or associated equipment belonging to RWE within the Order land;

“environmental permit” means the environmental permit held by RWE in relation to the site with reference EP3433LZ;

“functions” includes powers and duties;

“in” in a context referring to the existing apparatus or alternative apparatus being in land, includes a reference to apparatus under, over or on land;

“plan” includes all designs, drawings, specifications and method statements necessary to describe the works to be executed;

“RWE” means RWE Generation UK Plc, company number 03892782 of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB or any of its entities or successor entities;

“RWE Undertaking” means any land and existing apparatus belonging to RWE including but not limited to the site, the existing apparatus and the land subject to the environmental permit including any rights, liabilities and duties of RWE;

“specified powers” means the powers conferred by articles 11 (street works); 12 (Application of then 1991 Act), 13 (temporary restriction of use of streets); 14 (access to works); 15 (traffic regulation); 17 (authority to survey and investigate the land); 18 (removal of human remains); 27 (rights under or over streets); 28 (temporary use of land for carrying out the authorised development); 29 (temporary use of land for maintaining the authorised development), and 35 (Felling or lopping of trees and removal of hedgerows) of the Order;

“specified works” means any authorised works under the Order which are undertaken within 3m of the road or proposed road (or 15m of any apparatus within the site) or which may have an adverse impact on the RWE Undertaking and includes invasive investigatory works;

“the site” means the former Tilbury B Power Station site located to the East of Tilbury Town as shown on sheets 1 and 4 of the Land Plans.

(2) Where under this Part of this Schedule RWE is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval—

- (a) is not to be unreasonably withheld and any consent,
- (b) may be given subject to such reasonable requirements and/or conditions as RWE may have or consider necessary for the protection of the existing apparatus and RWE Undertaking; and
- (c) is intended to control the means and practicalities of the specified works to protect the existing apparatus and the RWE Undertaking.

Exercise of Powers

3.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus under articles 19, 22, 25 or 30 override any easement or other interest of RWE otherwise than by agreement.

(2) Regardless of any provision in this Order and in particular article 37 (Operational land for the purposes of the 1990 Act), no part of the site and the affected highways or streets within the site will become operational land of the undertaker, and nothing under this Order will affect the status of the land in so far as it forms operational land of RWE.

(3) Article 41 (Application of landlord and tenant law) does not apply to any agreement entered into between the undertaker and RWE in relation to the site.

(4) At least 56 days before the undertaker exercises any or all of—

- (a) the specified powers in respect of the site and the affected highways or streets within the site; or
- (b) the specified powers in respect of the RWE Undertaking (insofar as that Undertaking is located outside of the site); or
- (c) the powers referred to in sub-paragraph (6),

the undertaker must submit to RWE details of the works to be undertaken in reliance on those powers.

(5) Any specified powers:

- (a) in respect of the site and the affected highways or streets within the site must not be exercised except with the agreement of RWE; and
- (b) in respect of the RWE Undertaking (insofar as that Undertaking is located outside of the site) must not be exercised without the undertaker first consulting RWE on the details submitted pursuant to sub-paragraph (4) and taking account of any consultation response.

(6) The undertaker must not exercise the powers conferred by article 3 (Development consent etc. granted by the Order), article 8 (Consent to transfer benefit of Order), 16 (discharge of water) article 20 (statutory authority to override easements and other rights) or article 23 (private rights) in relation to any land in the site without the consent of RWE.

(7) Any agreement or approval or consent to be given by RWE under this paragraph:

- (a) must not be unreasonably withheld or delayed; and
- (b) may be given subject to such reasonable requirements and/or conditions as RWE may have or consider necessary for the protection of the RWE Undertaking.

(8) If RWE refuses any approval or agreement or consent sought under this paragraph then that refusal must be accompanied by a statement of grounds for refusal.

Existing apparatus

4.—(1) Despite any provision of this Order and anything shown on the Land Plans, the undertaker must not acquire any existing apparatus other than by agreement.

(2) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any existing apparatus is placed, that existing apparatus must not be removed and any right of RWE to use, maintain, or renew that existing apparatus in that land must not be extinguished until a replacement is installed and available for use by RWE.

(3) Any replacement apparatus must fulfil the same functions as the apparatus being replaced and must be no less advantageous in nature to RWE than the apparatus being replaced.

(4) Not less than 56 days before starting the execution of specified works, the undertaker must submit to RWE a plan, section and description of the works to be executed.

(5) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (4) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by RWE for the alteration or otherwise for the protection of the existing apparatus, or for securing access to it, and RWE is entitled to watch and inspect the execution of those works, and the undertaker must supply RWE with any additional information concerning such works as RWE may reasonably require.

(6) Any requirements made by RWE under sub-paragraph (5) must be made within a period of 56 days beginning with the date on which a plan, section and description under sub-paragraph (4) are submitted to it.

(7) Where RWE requires any protective works under sub-paragraph (5) to be carried out either by itself or by the undertaker (whether of a permanent or temporary nature), the protective works must be carried out to RWE's reasonable satisfaction prior to the carrying out of the specified works.

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(9) The undertaker is not required to comply with sub-paragraph (4) in a case of emergency, but in that case it must give to RWE notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (5) in so far as is reasonably practicable in the circumstances.

(10) The undertaker must pay to RWE the proper and reasonable expenses reasonably incurred by RWE in, or in connection with, the inspection, alteration or protection of any existing apparatus.

(11) Subject to sub-paragraph (14) if by reason, or in consequence, of the construction, use, operation or failure of any specified works or in consequence of the construction, use, operation, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, any damage is caused to any existing apparatus or property of RWE, or to the road, or to the RWE Undertaking, or to operations, or there is any interruption in any service provided by RWE, or in the supply of any goods to RWE or by RWE, or RWE becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the proper and reasonable cost reasonably and properly incurred by RWE in making good such damage or restoring operations, services or supply; and
- (b) indemnify RWE for any other expenses, losses, demands, proceedings, damages, claims penalty or costs incurred by or recovered from RWE, by reason or in consequence of any such damage or interruption.

(12) The fact that any act or thing may have been done by RWE on behalf of the undertaker or in accordance with a plan approved by RWE or in accordance with any requirement of RWE or its supervision does not (subject to sub-paragraph (13)) excuse the undertaker from liability under sub-paragraph (11)(a).

(13) Nothing in sub-paragraph (11)(a) imposes any liability on the undertaker with respect to any loss, damage, injury or interruption to the extent that it is attributable to the neglect or default of RWE, its officers, servants, contractors or agents.

(14) RWE must give the undertaker reasonable notice (being not less than 28 days) of any claim or demand, and no settlement or compromise may be made without the consent of the undertaker (not to be unreasonably withheld or delayed) which, if it reasonably withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Road, proposed road and RWE Undertaking

5.—(1) The undertaker must give RWE no less than 56 days' written notice of the intended commencement of any specified works and must include with this notification a plan and description of the works to be commenced and a programme for these works.

(2) Subject to sub-paragraph (3), the undertaker must permit RWE, its successors in title, occupiers, tenants and invitees of the site pedestrian and vehicular access at all times and for all purposes along the road and proposed road in common with the undertaker.

(3) The undertaker must give RWE not less than 28 days' notice of any exercise of powers under article 11 (Street works), article 13 (Temporary restriction of use of streets), article 14 (access to works) and article 15 (traffic regulation) which would restrict access by RWE, its successors in title, occupiers, tenants and invitees to the road and/or the proposed road. Where access to the road along an existing route is prevented or restricted by the undertaker, the undertaker must ensure that suitable alternative is available for use by RWE, its successors in title, occupiers, tenants and invitees for the whole period of the closure or restriction before exercising any power.

(4) Save in the case of emergency, the undertaker may not prevent or restrict RWE from using the road (or any alternative access provided under these protective provisions).

(5) The undertaker must ensure that the road or a suitable alternative is open for emergency access to the site at all times.

(6) If the undertaker requires to undertake any specified works which will break open the surface of the road or involve any temporary closure of the road then the undertaker must provide 7 days written notice of such works to RWE and acting reasonably must have regard to (and accommodate so far as reasonably practicable) any requests from RWE in respect of this period of works, including measures, where practicable to minimise disruption and facilitate access to the site.

(7) Where any temporary closure of the road is required, a suitable alternative access to the site must be provided to RWE, its occupiers, tenants and invitees which is no less convenient to access the site than the road for the whole period of the closure. The undertaker must have regard to any requests from RWE (acting reasonably) in relation to the location of the alternative access road.

(8) The undertaker must keep the road (or alternative access if one is provided) clean and tidy and free of obstructions at all times.

(9) If at any time RWE requires the relocation, variation or alteration of the road or the proposed road, then RWE shall serve written notice on the undertaker informing them of this fact and identifying the proposed relocation, alteration or variation of the road or the proposed road within the Site.

(10) Subject to—

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- (a) agreement by the undertaker (not to be unreasonably withheld or delayed) that the proposed relocation, alteration or variation of the road or the proposed road within the site is acceptable; and
- (b) RWE meeting any costs of the undertaker associated with the proposed relocation, alteration or variation of the road and/or the proposed road within the site including alterations of connections to access roads outside the Site; and
- (c) RWE granting the necessary rights for the proposed relocation, alteration or variation of the road or the proposed road within the Site; and
- (d) the undertaker seeking and being granted, the necessary rights for the proposed relocation, alteration or variation of the road or the proposed road as is necessary to connect to the altered or varied road or proposed road.

General

6. Any difference or dispute arising between the undertaker and RWE under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and RWE, be determined by arbitration in accordance with article 42 of this Order.

7. The undertaker and RWE must each act reasonably in connection with the implementation of this Part of this Schedule.

Notices

8. Any plans or notices submitted to RWE by the undertaker pursuant to this Part must be sent to RWE c/o the Company Secretary at its registered address on Windmill Hill Business Park, Whitehill Way, Swindon, SN5 6PB or such other address as RWE may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 10

FOR THE PROTECTION OF THURROCK BOROUGH COUNCIL

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Thurrock Council.

2. In this Part of this Schedule—

“costs” will include the reasonable costs to the Council of the time of its own officers as well as costs expended;

“illuminated signage” means two illuminated highway signs to be installed within the boundary of the local highway (Station Road) to the south of the Station Road Level Crossing to provide warning of the level crossing, and any associated works including provision of an electrical connection;

“Consents” means approvals, consents, licences, permissions, or registrations;

“RSA” or “Road Safety Audit” means a review of the proposed design or any works and any road safety impacts carried out in accordance with the Design Manual for Roads and Bridges or such other standard as the undertaker and the Council may agree;

“the Council” means Thurrock Borough Council;

“highway” means a highway vested in or maintainable by the Council as highway authority under the 1980 Act; and

“specified work” means the works under the Order to create new junctions to the public highway at Station Road and Fort Road, and the installation of Work no. 4 (the gas pipeline) in or under Station Road.

Road condition surveys

3. The Council will, at the cost of the undertaker, procure or undertake road conditions surveys on the following highways—

- (a) St Andrews Road, between Tilbury Port Gate 1 and Ferry Road junction;
- (b) Port Access Road between Ferry Road Junction and Fort Road (including connection road);
- (c) Fort Road, between Port Access Road and Coopers Shaw Road/Gunn Hill Junction;
- (d) Coopers Shaw Road between Fort Road and Station Road, and
- (e) Station Road between Cooper Shaw Road and the site entrance.

4.—(1) The undertaker will notify the Council of—

- (a) the anticipated date of commencement of development under this Order; and
- (b) the anticipated construction programme and date of completion of the authorised development;

not less than 3 months prior to that anticipated date of commencement of development under this Order.

(2) The Council will provide a proposed scope setting out the number (having regard to the construction programme notified to it by the undertaker), content and format of road conditions surveys to the undertaker for comment no later than 4 weeks after being notified under sub-paragraph (1). The proposed scope will include live data monitoring to provide 24/7 speed and volume counts. The Council must have regard to any reasonable comments made by the undertaker within 2 weeks of receipt of that proposed scope in finalising the scope of the road conditions surveys.

(3) The first road condition survey must be undertaken prior to the anticipated commencement of HGV movements for the authorised development, and further surveys must be undertaken at 3 month intervals from the date of the first surveys until the completion of the construction phase of the authorised development. A final survey must be undertaken within 28 days of the Council being notified by the undertaker that the construction of the authorised development has been completed.

5.—(1) The Council will invoice the undertaker for the reasonable anticipated costs of all of the planned road conditions surveys set out in the scope following the finalisation of the scope.

(2) Where the costs incurred by the Council exceed the sum invoiced under sub-paragraph (1) because the development did not complete in accordance with the programme notified to the Council under paragraph 4(1)(b), the Council may, following the carrying out of the final survey under sub-paragraph 4(3), invoice the undertaker for the costs incurred in excess of the sum invoiced under sub-paragraph (1).

HGV route remediation

6. The undertaker must maintain and provide to the Council at 3 month intervals from the date of commencement of development under this Order until the authorised development is completed, records of the number of HGVs using the local highway to access the authorised development and details of which route such HGVs used.

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7.—(1) The Council will, having regard to the road condition surveys, identify any need for remediation of the highway on the following roads—

- (a) St Andrews Road, between Tilbury Port Gate 1 and Ferry Road junction;
- (b) Port Access Road between Ferry Road Junction and Fort Road (including connection road);
- (c) Fort Road, between Port Access Road and Coopers Shaw Road/Gunn Hill Junction;
- (d) Coopers Shaw Road between Fort Road and Station Road, and
- (e) Station Road between Cooper Shaw Road and the site entrance.

(2) Where a need for remediation works or measures is identified under sub-paragraph (1), the Council must prepare a schedule of the works or measures required and of the cost of the delivery of those works or measures.

(3) The Council will invoice the undertaker for a portion of the costs of the works or measures identified under sub-paragraph (2) proportionally with the undertaker's HGV use of the roads as compared to the overall HGV movements in percentage terms as established by the road conditions surveys. For example, where the undertaker's HGV use is 10% of all HGV use of the highways listed in sub-paragraph (1), the undertaker will be liable to the Council for 10% of the costs of the identified remediation works and measures.

8.—(1) Where the undertaker's HGV use deviates from the anticipated route (being the highways listed in paragraph (3)), the Council may, acting reasonably, take such action by way of the making of traffic regulation orders or traffic management, as it considers is necessary to prevent HGV use of unsuitable highways or to protect the safety or amenity of other highway users and properties adjacent to highways.

(2) Where the Council takes action under sub-paragraph (1) it may invoice the undertaker for the reasonably incurred costs of that action.

(3) Reasonably incurred costs under sub-paragraph (2) will include the costs of promoting and making any traffic regulation order.

Specified works

9.—(1) The undertaker will allow and facilitate an appropriately qualified officer of the Council acting as highway authority to participate in the design process for any Work authorised by this Order which involves a specified work, and will have reasonable regard to any views of that officer in finalising the detailed design of that Work, provided always that any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

(2) The undertaker must, before commencing any specified work, provide to the Council for approval the proposed details for the specified works and a total estimate of the cost for all of the specified works.

(3) Following approval under sub-paragraph (2), the Council will issue to the undertaker an invoice for 6% of the total estimate of the costs for all of the specified works as approved, which sum will be used to cover the Council's reasonable fees, costs, charges and expenses in approving the plans for and in supervising construction of the specified works.

10.—(1) Any officer of the Council duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the authorised development which—

- (a) is in, on, over or under any highway; or
- (b) which may affect any highway;

during the carrying out of the work, and the undertaker will give to such officer all reasonable facilities for such inspection and, if the officer is of the opinion that the construction of the work poses danger to any highway or to any property of the relevant highway authority or danger to persons or vehicles or other property in relation to which the highway authority might be liable on, in, over or under any highway, the undertaker will adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway or persons or vehicles or other property aforesaid.

(2) Any officer of the Council exercising the right to inspect works under sub-paragraph (1) must comply with all reasonable health and safety requirements and instructions of the undertaker in doing so.

11. The undertaker must, if reasonably required by the Council, provide and maintain during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic and any other traffic measures required to protect the safety of road users in accordance with chapter 8 of the Traffic Signs Manual as may be necessary.

Level crossing warning illuminated signage

12.—(1) The illuminated signage is to be located in the vicinity of the new junction to be formed from the new access road (Work no. 6 authorised by this Order) on to Station Road.

(2) The Council will prepare a design for the illuminated signage in consultation with Network Rail within 8 weeks of being requested to do so by the undertaker, or 8 weeks from the date of receipt of the notice of commencement of the authorised development, whichever is the earlier.

(3) The Council must obtain any Consents required to install the illuminated signage.

(4) The Council is responsible for approving, procuring, carrying out, supervising and, inspecting any works associated with installing the illuminated signage.

(5) The Council must carry out any RSAs which are required in relation to the design and installation of the illuminated signage.

(6) The Council must use best endeavours to carry out the works to install the illuminated signage no later than 6 months from the date of commencement of the authorised development.

(7) The Council will invoice the undertaker for its reasonably incurred costs under this paragraph as soon as reasonably practicable following installation of the illuminated signage.

Payment of invoices

13. Any invoice issued by the Council under this Part of this Schedule is payable by the undertaker within 30 days of issue.

Disputes

14. Any difference in arising between the undertaker and the Council under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) will be resolved by arbitration under article 42(arbitration).

Indemnity

15. The undertaker indemnifies the Council as highway authority in relation to all costs, damages, losses or claims reasonably incurred by the Council in relation to any works by the undertaker in, on, over or under the highway.

Status: *This is the original version (as it was originally made).*

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Thurrock Power Limited to construct, operate and maintain a new gas fired generating station and battery storage facility at Tilbury, Thurrock, Essex and carry out all associated works.

The Order also makes provision in connection with the maintenance of the authorised development.

The Order would permit Thurrock Power Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the plans, environmental statement and other documents mentioned in this Order and certified in accordance with article 38 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Thurrock Power Limited, 145 Kensington Church St, Kensington, London W8 7LP.