

**2020 No. 419**

**INFRASTRUCTURE PLANNING**

**The Riverside Energy Park Order 2020**

*Made* - - - - *9th April 2020*

*Coming into force* - - *1st May 2020*

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

The application has been examined by the Examining Authority 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(c). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83(d) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4(e) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

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(a) 2008 c.29. The relevant provisions of the 2008 Act are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, 2014/469, 2014/2381, 2015/377, 2015/1682, 2017/524, 2017/572 and S.I. 2018/378.

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 2008 c.29. Section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of Schedule 25(20) to the Localism Act 2011 (c.20).

(e) S.I. 2017/572.

In accordance with section 127(a) of the 2008 Act, the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Riverside Energy Park Order 2020 and comes into force on 1st May 2020.

#### **Interpretation**

2.—(1) In this Order, unless otherwise stated—

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

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

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

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

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

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

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

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

“access and public rights of way plans” means the plans of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the access and public rights of way plans for the purposes of this Order under article 40 (certification of plans etc.);

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

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks; electricity cables; telecommunications equipment and electricity cabinets;

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

“book of reference” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the book of reference for the purposes of this Order under article 40 (certification of plans etc.);

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(a) 2008 c.29. Section 127 was amended by section 23,(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013 (c.27) and by paragraphs 64 (2) of Schedule 13(1) to the Localism Act 2011 (c.20).

(b) 1961 c.33.

(c) 1965 c.56.

(d) 1980 c.66.

(e) 1981 c.66.

(f) 1984 c.27.

(g) 1990 c.8.

(h) 1991 c.22.

(i) 2008 c.29.

“biodiversity units” means the product of the size of an area, and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value (as assessed using the Defra biodiversity off-setting metric);

“biodiversity off-setting scheme” means a scheme which will deliver biodiversity enhancements which must not be less than the off-setting value;

“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;

“CHP statement” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the CHP statement for the purposes of this Order under article 40 (certification of plans etc.);

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

“commissioning” means the process of assuring that all systems and components of the authorised development or part of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions are to be construed accordingly;

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

“date of final commissioning” means the date on which the commissioning of the authorised development (or any part of the authorised development as the context requires) is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 23 of Schedule 2 (requirements);

“Defra biodiversity off-setting metric” means the mechanism published by the Department for Environment, Food and Rural Affairs in 2012 to quantify impacts on biodiversity, which allows biodiversity losses and gains affecting different habitats to be compared and ensures offsets are sufficient to compensate for residual losses of biodiversity;

“design principles” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the design principles for the purposes of this Order under article 40 (certification of plans etc.);

“electronic transmission” means a communication transmitted—

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

(b) by other means provided it is in an electronic form;

“Environment Bank” means the Environment Bank Limited (company number 05944540) whose registered office is at Low Bramley Grange Farm, Bramley Grange Grewelthorpe, Ripon, North Yorkshire, HG4 3DN together with its successors;

“environmental statement” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the environmental statement for the purposes of this Order under article 40 (certification of plans etc.);

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016(a);

“flood risk assessment” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

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(a) S.I. 2016/1154.

“FRAPA drawings” means the drawings of that description referred to in Schedule 11 certified by the Secretary of State as the FRAPA drawings for the purposes of this Order;

“Greater London Authority” means the Greater London Authority, City Hall, The Queen’s Walk, More London, London, SE1 2AA;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“land plans” means the plans of that description referred to in Schedule 11 certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation shown for each numbered work on the works plans;

“London Power Networks” means London Power Networks PLC (company number 03929195) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP or a subsidiary of London Power Networks PLC;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not replace the whole of the authorised development, but only insofar as such activities do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“MOL plan” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the MOL plan for the purposes of this Order;

“off-setting value” means the net biodiversity impact of the authorised development, calculated using the Defra biodiversity off-setting metric, measured in biodiversity units;

“operational period” means the period from the date of final commissioning to the permanent cessation of the operation of Work No. 1;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development as shown on the land plans;

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

“outline biodiversity and landscape mitigation strategy” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline biodiversity and landscape strategy for the purposes of this Order;

“outline code of construction practice” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline code of construction practice for the purposes of this Order;

“outline construction traffic management plan” means Appendix L of the transport assessment;

“outline drainage design strategy” means Appendix G of the flood risk assessment;

“outline lighting strategy” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline lighting strategy for the purposes of this Order;

“outline operational worker travel plan” means Appendix M of the transport assessment;

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

“pre-commencement land” means the land shown on the pre-commencement plan;

“pre-commencement plan” means the plan of that description referred to in Schedule 11 certified by the Secretary of State as the pre-commencement plan for the purposes of this Order;

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(a) 1981. c.67. Section 7 was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34). There are other amendments to this section which are not relevant to this Order.

“pre-commencement works” means operations on the pre-commencement land only consisting of land preparation, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, erection of construction welfare facilities, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and any other works that do not give rise to any likely significant adverse environmental effects as assessed in the environmental statement;

“relevant planning authority” means the London Borough of Bexley and any successor to its functions in relation to land in its area, and Dartford Borough Council and any successor to its functions in relation to land in its area;

“REP and RRRF Application Boundaries Plan” means the plan of that description referred to in Schedule 11 certified by the Secretary of State as the REP and RRRF Application Boundaries Plan for the purposes of this Order;

“requirements” means those matters set out in Schedule 2 to this Order;

“Riverside Energy Park Limited” means the company of that name (company number 11536739) whose registered address is Level 5, 10 Dominion Street, London, England, EC2M 2EF;

“RRRF” means the Riverside Energy from Waste Facility known as Riverside Resource Recovery Facility located at Norman Road, Belvedere, Kent;

“RRRF condition” means a condition to the RRRF planning permission and where a condition is referred to by a number, that reference is to the corresponding numbered condition on the RRRF planning permission;

“RRRF planning permission” means the planning permission granted under the 1990 Act by the relevant planning authority for the RRRF and given reference number 16/02167/FUL;

“RRRL” means Riverside Resource Recovery Limited (company number 03723386) whose registered office is at 2 Coldbath Square, London, EC1R 5HL together with its successors in title of that part of the Order land identified in the book of reference;

“section 36 consent” means the consent granted by the Secretary of State pursuant to section 36 (consent required for construction of etc. generating stations) of the Electricity Act 1989(a) in respect of the RRRF as varied by the Secretary of State on 13 March 2015 under Section 36C (variation of consents under section 36) of that Act and given reference number GDBC/003/00001C-06;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of Chapter I) of the Communications Act 2003(b);

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

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

“traffic authority” has the same meaning as in section 121A of the Road Traffic Regulation Act 1984;

“transport assessment” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the transport assessment for the purposes of this Order;

“Transport for London” means the body corporate established under section 154 (establishment) of the Greater London Authority Act 1999 of 55 Broadway, London, SW1H 0BL and any successor to its functions in relation to streets within the London Borough of Bexley;

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a) 1989 c.29  
b) 2003 c.21

“undertaker” means Cory Environmental Holdings Limited (company number 05360864, whose registered office is at Level 5, 10 Dominion Street, London, England, EC2M 2EF) or any other person who for the time being has the benefit of this Order in accordance with articles 8 and 9 of this Order;

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

“works plans” means the plans of that description referred to in Schedule 11 certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the 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 imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

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

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

(5) References in this Order to numbered works are references to the works numbered in Schedule 1.

(6) References to “Schedule” are, unless otherwise stated, references to Schedules to this Order.

(7) The expression “includes” is to be construed without limitation.

(8) References to any statutory body include any body’s successor in respect of functions which are relevant to this Order.

(9) References in this Order to “part of the authorised development” means all or part of any numbered work.

## PART 2

### WORK PROVISIONS

#### *Principal powers*

#### **Development consent granted by the Order**

**3.**—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be constructed, operated and maintained within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

(3) In constructing and maintaining the authorised development the undertaker may deviate vertically from the levels of the authorised development to any extent downwards not exceeding two metres.

#### **Maintenance of authorised development**

**4.**—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order and the requirements 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 the authorised development**

5.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) Other than as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of an electricity generating station.

## **Disapplication of legislative provisions and modifications to section 36 consent and RRRF planning permission**

6.—(1) The provisions of any bylaws 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(a) do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) Regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 does not apply in respect of any flood risk activity carried out under the powers conferred by this Order.

(3) The section 36 consent and the RRRF planning permission are to be amended for the purposes of this Order only as set out in Schedule 13 (modifications to the section 36 consent and RRRF planning permission).

(4) To the extent that there is an inconsistency on the land coloured brown identified on the REP and RRRF Applications Boundaries Plan between any provision of this Order and all or any of RRRF condition 1, RRRF condition 22 or RRRF condition 32 then, in respect of such inconsistency only, there is deemed to be no breach of all or any of RRRF condition 1, RRRF condition 22 or RRRF condition 32 (as applicable) and no enforcement action can be taken following the carrying out of the pre-commencement works, commencement or operation of the authorised development.

(5) In the event that planning permission 15/02926/OUTM is implemented and the land which is the subject of that planning permission is subsequently used for the temporary uses as authorised under this Order, a new planning permission is not required for the resumption of the land's development and use for which planning permission 15/02926/OUTM grants consent following the end of the temporary uses authorised under this Order.

(6) The provisions of the Neighbourhood Planning Act 2017(b) in so far as they relate to temporary possession of land under articles 31 (temporary use of land for carrying out the authorised development) and 32 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

## **Port of London Act 1968**

7.—(1) Nothing in this Order relieves the undertaker of any obligation to obtain any permit or licence under the Port of London Act 1968(c) in respect of works or operations carried out within the Thames under the powers of this Order.

(2) In this article “the Thames” means that part of the river Thames within the Order limits and within the limits of the Port of London Authority, as described in Schedule 1 (description of port limits) to the Port of London Act 1968.

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(a) 1991 c.57

(b) 2017 c.20

(c) 1968 (c.xxxii).

### **Benefit of this Order**

8.—(1) Subject to paragraph (2) and article 9 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to works falling within the description of paragraph (a) of Work No. 6 (but only in so far as such works relate to Work No. 9) and Work Nos. 9 and 10 for which consent is granted by this Order for the benefit of the undertaker and London Power Networks.

### **Consent to transfer benefit of the Order**

9.—(1) Subject to paragraph (4) the undertaker may, with the consent of the Secretary of State—

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

(2) Where an agreement has been made in accordance with paragraph (1)(a) or (1)(b) references in this Order to the undertaker, except 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 the exercise of the powers under paragraph (1) except where—

- (a) the transfer or grant is made to Riverside Energy Park Limited (and in circumstances where Riverside Energy Park Limited is a wholly owned subsidiary of Cory Environmental Holdings Limited); or
- (b) the transferee or lessee holds a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989; or
- (c) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of any claims made;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights 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 five working 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.

### **Guarantees in respect of payment of compensation**

**10.**—(1) The undertaker must not begin to 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 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
- (b) an alternative form of security and the amount of that security 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 22 (compulsory acquisition of land);
- (b) article 24 (compulsory acquisition of rights);
- (c) article 26 (private rights);
- (d) article 31 (temporary use of land for carrying out the authorised development);
- (e) article 32 (temporary use of land for maintaining the authorised development); and
- (f) article 33 (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.

### *Streets*

#### **Street works**

**11.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraph (a), (b), (c) or (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) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### **Power to alter layout, etc., of streets**

12.—(1) The undertaker may for the purposes of the authorised development alter the layout of or construct any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) of that Part of that Schedule and in the case of temporary works as specified in column (2) of Part 2 of Schedule 4 in the manner specified in relation to that street in column (3) of that Part of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development alter the layout of any street within the order limits and, without limiting the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Temporary prohibition or restriction of use of streets and public rights of way**

13.—(1) The undertaker may, during and for the purposes of constructing the authorised development, temporarily alter, divert, prohibit the use of or restrict the use of any street or public right of way within the Order limits and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) and vehicles going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition or restriction of a street or public right of way under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets or public rights of way specified in columns (1) and (2) of Schedule 5 (temporary prohibition or restriction of the use of streets or public rights of way) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent.

(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.

### **Permanent stopping up of streets**

14.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up the street specified in columns (1) and (2) of

Schedule 6 (permanent stopping up of streets) to the extent specified and as described in column (3) of that Schedule.

(2) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

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

(4) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

**15.** The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access in the location specified in Part 1 of Schedule 4;
- (b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 4; and
- (c) with the approval of the relevant planning authorities after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Agreements with street authorities**

**16.—**(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of any street or the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (d) any alteration diversion, prohibition or restriction in the use of a street authorised by this Order;
- (e) the construction in the street of any of the authorised development; or
- (f) any such works as the parties may agree.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Traffic regulation measures**

**17.—**(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
  - (b) make provision as to the direction or priority of vehicular traffic on any road,
- either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary prohibition or restriction of use of streets and public rights of way) or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) 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 is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act (road traffic contraventions subject to civil enforcement) 2004(a).

(4) In this article—

- (a) subject to sub-paragraph (b), expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

#### *Supplementary powers*

### **Discharge of water**

**18.—**(1) Subject to sub-paragraphs (3) and (4), the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance 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 pursuant to 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(b).

(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, whose consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

(4) The undertaker must not make any opening into any public sewer or drain except—

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(a) 2004 c.18. There are amendments to this Act not relevant to this Order.  
(b) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c.37) and section 32, Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 c.29.

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld or delayed; 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 pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016.

(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 (interpretation) of the Harbours Act 1964<sup>(a)</sup>, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(b)</sup> have the same meaning as in that Act.

### **Authority to survey and investigate the land**

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

- (a) survey or investigate the land;
- (b) without limitation 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 limitation 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 14 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 entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land 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—

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

but such consent must not be unreasonably withheld.

(5) The undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land once it has ceased to use the land for the purposes authorised by this article.

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

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(a) 1964 c.40.

(b) 1991 c.57.

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

### **Protective work to buildings**

**20.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building or structure lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building or structure; or
- (b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of 5 years beginning with the date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised the undertaker may enter and survey any building or structure falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building or structure the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building or structure and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits.

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works under this article to a building or structure;
- (b) a power under paragraph (3) to enter a building or structure and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building or structure and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter and take possession of land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building, structure or land not less than 14 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a), (c) or (d) specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), 5(b) (5)(c) or (5)(d), the owner or occupier of the building, structure or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building, structure or land to be referred to arbitration under article 42(3) (procedures in relation to certain approvals etc.).

(7) The undertaker must compensate the owners and occupiers of any building, structure or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out to a building or structure under this article; and
- (b) within 5 years beginning with the date of final commissioning for that part of the authorised development in the vicinity of the building or structure it appears that the protective works are inadequate to protect the building or structure against damage

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(a) The functions of the Lands Tribunal under the 1961 Act are transferred to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 (c.15).



caused by the construction, on operation or maintenance of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building or structure for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building or structure by the construction, operation or maintenance of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation or maintenance of the authorised development.

### **Felling or lopping of trees**

**21.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must 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 (determination of questions of disputed compensation) of the 1961 Act.

## **PART 3**

### **POWERS OF ACQUISITION AND POSSESSION OF LAND**

#### *Powers of acquisition*

#### **Compulsory acquisition of land**

**22.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) This article is subject to article 24, article 25 (acquisition of subsoil only) and article 33.

#### **Time limit for exercise of authority to acquire land compulsorily**

**23.**—(1) After the end of the period of five years beginning on the day on which this Order comes into force—

- (a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act; and

(b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 28 (application of the 1981 Act).

(2) The authority conferred by article 31 (temporary use of land for carrying out the authorised development) must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**24.**—(1) Subject to paragraph (2) the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 22 (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 the table in Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and the benefit of restrictive covenants over land and the creation and acquisition of such new rights and the imposition of such new restrictive covenants as are specified in column (2) of the table in that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants)) and section 12 (divided land) of the 1981 Act, where the undertaker creates or acquires a right over land or the benefit of a restrictive covenant, under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new 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 of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictive covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 8 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restrictive covenant as they apply to the compulsory purchase of land and interests in land.

### **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 22 (compulsory acquisition of land) and paragraphs (1) and (2) of article 24 (compulsory acquisition of rights) as may be required for any purpose for which that land or rights over land may be created or acquired under that provision instead of acquiring the whole of the land.

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

(3) 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;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

### **Private rights**

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

- (a) as from the date of acquisition of the land by the undertaker whether compulsorily or by agreement;
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act; or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are suspended and unenforceable or, where the owner of such rights or the person have the benefit of such restrictive covenants is notified by the undertaker, extinguished, in so far as the continuance of the right or the burden of the restrictive covenant would be inconsistent with the exercise of the right or burden of the restrictive covenant by the undertaker—

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

whichever is the earliest.

(3) Subject to the provisions of this article and without limiting paragraph (1), all private rights and restrictive covenants 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 or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land 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 or the imposition of a restrictive covenant under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 33 (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 or creation of rights over land or the imposition of restrictive covenants over or affecting the land;

- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

stating 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 or restriction 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) References in this article to private rights over land include any right of way, trust, incident, 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, agreement or undertaking having that effect.

### **Power to override easements and other rights**

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

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

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

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land within the Order limits (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the 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 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) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) 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.

## **Application of the 1981 Act**

- 28.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), 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) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(a) (time limit for general vesting declaration).
- (6) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 2020”.
- (7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(c) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 25 (acquisition of subsoil only) of the Riverside Energy Park Order 2020, which excludes the acquisition of subsoil only from this Schedule.”.
- (10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 29 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

## **Modification of Part 1 of the 1965 Act**

- 29.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) 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)(d) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 2020”.
- (3) In section 11A(e) (powers of entry: further notices of entry)—
- (a) in subsection (1)(a) after “land” insert “under that provision”; and
- (b) in subsection (2) after “land” insert “under that provision”.

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(a) Inserted by section 182(2) of The Housing and Planning Act 2016 (c.22).

(b) Inserted by section 202(2) of The Housing and Planning Act 2016 (c.22).

(c) Inserted by paragraph 6 of Schedule 18 to The Housing and Planning Act 2016 (c.22).

(d) Inserted by section 202(1) of the Housing and Planning Act 2016 (c.22).

(e) Inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 2020”.

(5) In Schedule 2A(a) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 25(3) (acquisition of subsoil only) of the Riverside Energy Park Order 2020, which excludes the acquisition of subsoil only from this Schedule.”; and

(b) after paragraph 29 insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 20 (protective work to buildings) or article 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the Riverside Energy Park Order 2020.”.

#### **Rights under or over streets**

**30.**—(1) The undertaker may enter upon, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for 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) is not to apply in relation to—

(a) any subway or underground building; or

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land 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 as a result, is to be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

#### *Temporary possession of land*

#### **Temporary use of land for carrying out the authorised development**

**31.**—(1) The undertaker may, in connection with the construction of the authorised development—

(a) enter on and take temporary possession of—

(i) so much of the land specified in columns (1) and (2) of the table in Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of the table in that Schedule;

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(a) Inserted by schedule 17(1) paragraph 3 to the Housing and Planning Act 2016 (c.22).

- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
  - (b) remove any buildings, fences, debris 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 (including mitigation works) specified in Schedule 9 in relation to that land.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
  - (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development 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 or any debris removed under this article.
- (5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (6) Any dispute as to a person’s entitlement to compensation under paragraph (5), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act 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)(i).
- (9) Nothing in this article precludes the undertaker from—
- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 7 under article 24 (compulsory acquisition of rights); or
  - (b) acquiring any right in the subsoil of any part of the Order land under article 25 (acquisition of subsoil only) or article 30 (rights under or over streets).
- (10) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.
- (11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act 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.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9.

### **Temporary use of land for maintaining the authorised development**

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

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

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

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

(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 powers conferred by 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 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance 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 to be required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act 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 of final commissioning.

### *Supplementary*

### **Statutory undertakers**

**33.** Subject to the provisions of article 24(2) (compulsory acquisition of rights) and Schedule 10 (protective provisions), the undertaker may—



- (a) exercise the powers conferred by article 22 (compulsory acquisition of land) and article 25 (acquisition of subsoil only) in relation to so much of the Order land as belongs to statutory undertakers;
- (b) extinguish or suspend the rights of or restrictive covenants for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land.

#### **Apparatus and rights of statutory undertakers in stopped up streets**

**34.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 11 (street works), article 12 (power to alter layout, etc., of streets), or article 13 (temporary prohibition or restriction of use of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 10 (protective provisions), as if this Order had not been made.

#### **Recovery of costs of new connections**

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

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

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

is to be 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 34 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

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

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

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

#### **Application of landlord and tenant law**

**36.—(1)** This article applies to any agreement entered into by the undertaker under article 9 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.

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(a) 2003 c.21.

(3) No enactment or rule of law to which sub-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.

### **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.

### **Defence to proceedings in respect of statutory nuisance**

38.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g) or (h) 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—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction 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(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (prior consent for work on construction sites) 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.

### **Protective provisions**

39. Schedule 10 (protective provisions) has effect.

### **Certification of plans etc.**

40.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans referred to in Schedule 11 (documents and plans to be certified) to this Order for certification that they are true copies of those documents.

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(a) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

(b) 1974 c.40.

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

### **Service of notices**

**41.**—(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 (7) to (9), by electronic transmission.

(2) Paragraph (1)(a) (service by post) does not apply in relation to the requirement to serve notice of the undertaker's intention to exercise the power under paragraph (5) of Article 20.

(3) 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.

(4) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) 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 that time of service.

(5) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an 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 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 the 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.

(6) 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) in a form sufficiently permanent to be used for subsequent reference.

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

(8) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (9).

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

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(a) 1978 c.30.

- (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 seven days after the date on which the notice is given.

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

**Procedures in relation to certain approvals etc.**

**42.**—(1) Subject to paragraph (2), Schedule 12 (procedure in relation to certain approvals etc.) is to have effect in relation to all consents, agreements or approvals contemplated by any provisions of this Order.

(2) Schedule 12 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 10 (protective provisions) or any dispute under article 20(6) (protective work to buildings) to which the following paragraph applies.

(3) Subject to any other provision in this Order, any difference or dispute arising under any provision of Schedule 10 or article 20(6) must, unless otherwise agreed in writing between the undertaker and the party in question, be referred to and settled in arbitration, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

**No double recovery**

**43.** Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

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

9th April 2020

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

# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in section 14(1)(a) (nationally significant infrastructure projects: general) and section 15 (generating stations) of the 2008 Act being a generating station with a capacity of over 50 megawatts but below 300 megawatts and associated development under sections 115(1) and (2) (development for which development consent may be granted) of the 2008 Act comprising all or part of—

In the London Borough of Bexley

Work No. 1 — Works to construct an integrated energy park—

- (a) Work No. 1A — an energy recovery facility with a capacity to process up to 805,920 tonnes of waste per calendar year including—
  - (i) fuel reception and storage facilities consisting of a tipping hall and vehicle ramp(s), shredder, solid fuel storage bunker, cranes and handling equipment;
  - (ii) waste processing lines, each line including a feed hopper, ram feed, air cooled moving grates, a boiler and steam systems, combustion air systems and flue gas treatment facilities including residue and reagent storage silos and tanks;
  - (iii) associated induced fans and emissions control monitoring systems;
  - (iv) up to two emission stacks;
  - (v) a steam turbine incorporating at least 30 megawatts heat off-take for district heating and electrical generator (if not constructed and installed as part of Work No. 2);
  - (vi) an integrated protection system and uninterruptable power supplies; and
  - (vii) bottom ash conveyors, including storage bunker, crane and ash collection bay.
- (b) No. 1B — an anaerobic digestion system with a capacity to process up to 40,000 tonnes of waste per calendar year including—
  - (i) fuel reception and storage facilities as constructed for Work No. 1A;
  - (ii) conveyor and feed system;
  - (iii) anaerobic digester, dryers and integrated heating system;
  - (iv) solid digestate treatment equipment, handling and storage;
  - (v) ventilation and air collection system;
  - (vi) emission stack;
  - (vii) gas flare;
  - (viii) combined heat and power plant, including combined heat and power engine;
  - (ix) an electrical switchyard, including switchgear and transformer;
  - (x) gas storage and upgrading equipment; and
  - (xi) associated gas and process heat pipes.
- (c) Work No. 1C — solar photovoltaic panels on all or part of Work No. 1E and, should a steam turbine building be constructed as part of Work No. 2, on all or part of the steam turbine building forming part of Work No. 2, switchgear, inverters, transformers and permanent equipment for maintenance.
- (d) Work No. 1D — a battery storage facility including—
  - (i) battery energy storage cells;

- (ii) transformers;
  - (iii) protection cabinets; and
  - (iv) switch gear and ancillary equipment.
- (e) Work No. 1E — a building with roof enclosing and/or supporting all or part of Work Nos. 1A, 1B, 1C and 1D.

Work No. 2 — Works to construct—

- (a) a cooling system comprising air-cooled condensers; and
- (b) if not constructed and installed as part of Work No. 1A, a steam turbine incorporating at least 30 megawatts heat off-take for district heating and electrical generator and a steam turbine building to house all or part of the same.

Work No. 3 — Works to construct and install combined heat and power equipment including heat exchangers, pipework (including flow/return pipework, valving, pumps, pressurisation and water treatment systems).

Work No.4 — Works to construct an electrical substation including switchgear, and transformer, busbar sections, integrated protection scheme and uninterruptable power supplies.

Work No. 5 — Works to construct or install supporting buildings and facilities, including—

- (a) diesel storage tanks;
- (b) a process effluent storage tank;
- (c) a demineralised water treatment plant;
- (d) fire water tank, pump room(s) and fire protection facilities;
- (e) a control room;
- (f) administration block(s);
- (g) a fully integrated distributed control system;
- (h) workshop(s) and associated stores;
- (i) spare parts storage facilities;
- (j) security gatehouses and barriers;
- (k) weighbridges;
- (l) a heavy goods vehicle holding area;
- (m) an external fuel container storage area;
- (n) emergency stand-by generator(s);
- (o) infrastructure for the transmission and/or storage of compressed natural gas;
- (p) an outage contractor compound; and
- (q) a permanent contractor laydown area.

Work No. 6 — Works to construct and install supporting infrastructure, including—

- (a) pipework (including flow/return pipework), cables, telecommunications, other services and associated infrastructure;
- (b) site drainage, waste management, water, wastewater, other services and associated infrastructure;
- (c) new or alteration to accesses, a vehicular access road and internal vehicular access road, vehicle turning, waiting and parking areas; and
- (d) vehicle parking.

Work No. 7 — Works to construct and install from Work No. 6 pipes and cables.

Work No. 8 — Works to construct temporary construction compounds including—

- (a) hard standing;

- (b) vehicle parking;
- (c) accommodation block(s);
- (d) new or alteration to accesses; and
- (e) construction fabrication areas.

In the London Borough of Bexley and the Borough of Dartford

Work No. 9 — Works to construct and install an electrical connection including—

- (a) 132kV electrical underground and overground cables and associated telemetry and electrical cabling;
- (b) cable trenches, ducting and jointing pits;
- (c) above ground cable trough structures which are either freestanding or attached to highway structures;
- (d) temporary construction compounds; and
- (e) new or alteration to accesses.

In the Borough of Dartford

Work No. 10 — Works to connect the electrical connection (Work No. 9) to the Littlebrook substation and associated improvements.

In connection with and in addition to Work Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 and, to the extent that it does not otherwise form part of those Work Nos., further associated development within the Order limits including—

- (a) external lighting infrastructure, including perimeter lighting columns;
- (b) fencing, boundary treatment and other means of enclosure;
- (c) demolition of existing buildings and structures;
- (d) signage;
- (e) CCTV and other security measures;
- (f) surface and foul water drainage facilities;
- (g) potable water supply;
- (h) new telecommunications and utilities apparatus and connections;
- (i) hard and soft landscaping;
- (j) biodiversity enhancement measures and environmental mitigation measures;
- (k) works permanently to alter the position of existing telecommunications and utilities apparatus and connections;
- (l) works for the protection of buildings and land; and
- (m) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections,

and such other buildings, structures, works or operations and modifications to, or demolition of, any existing buildings, structures or works as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1, but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 3

### Time limits

1. The authorised development must not commence after the expiry of five years from the date on which this Order comes into force.

### Detailed design approval

2.—(1) No part of Work No. 1A(iv), Work No. 1B(iv), Work No. 1C, Work No. 1E, Work No.2, Work No.3, Work No. 4, Work No. 5 and Work No. 6 may commence until details of the layout, scale and external appearance for that Work No. have been submitted to and approved by the relevant planning authority.

(2) No part of Work No. 1A and Work No. 3 may commence until a plan has been submitted to and approved by the relevant planning authority demonstrating that within Work No. 1A and Work No. 3 there is sufficient space to support a heat export system capable of providing at least 30 megawatts heat off-take for district heating.

(3) The details submitted for approval under sub-paragraph (2) must be submitted alongside the details submitted for approval under sub-paragraph (1).

(4) The details submitted for approval under sub-paragraph (1) must be in accordance with the design principles.

(5) The authorised development must be carried out in accordance with the approved details.

### Parameters of authorised development

3.—(1) The elements of the authorised development listed in column (1) of the table below (design parameters) must not exceed the maximum dimensions and levels and, where applicable, the minimum dimensions, set out in relation to that element in columns (3) to (7) of that table.

**Table 1**

(1) <i>Element of authorised development</i>	(2) <i>Work No.</i>	(3) <i>Maximum length (metres)</i>	(4) <i>Maximum width (metres)</i>	(5) <i>Maximum height (metres) AOD</i>	(6) <i>Minimum height (metres) above surrounding ground level</i>	(7) <i>Maximum depth (metres) below AOD</i>
Main Riverside Energy Park Building	1A (excluding Work No.1A(iv), 1C and 1E)	200	102	65	—	—
Solid fuel storage bunker	Part of Work No. 1A(i)	—	—	—	—	8
Anaerobic digestion system	1B (excluding Work No. 1B(vi) and Work No. 1B(vii))	87	68	43	—	—
Other integral	1D, 2(b), 3, 4, 5, 6 and	111	116	38	—	—



process buildings and structures	7					
Emissions stacks(s)	1A(iv)	–	46	113	90	–
Emission stack	1B(vi)			11	8	
Gas Flare	1B(vii)			17	4	

(2) The above surrounding ground level in respect of Work No. 1 must comply with the following parameters: a minimum level of one metre AOD and maximum level of three metres AOD.

#### **Pre-commencement biodiversity mitigation strategy**

4.—(1) No part of the pre-commencement works may be carried out until a pre-commencement biodiversity mitigation strategy has been submitted to and approved by the relevant planning authority.

(2) The pre-commencement biodiversity mitigation strategy submitted pursuant to sub-paragraph (1) must contain details of mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the pre-commencement works.

(3) The pre-commencement biodiversity mitigation strategy must be implemented as approved under sub-paragraph (1).

#### **Biodiversity and landscape mitigation strategy**

5.—(1) No part of the authorised development may commence until a biodiversity and landscape mitigation strategy for that part has been submitted to and approved by the relevant planning authority. The biodiversity and landscape mitigation strategy must be substantially in accordance with the outline biodiversity and landscape mitigation strategy and include details of—

- (a) mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the construction of the authorised development;
- (b) mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the operation of the authorised development;
- (c) the results of the Defra biodiversity off-setting metric together with the off-setting value required, the nature of such off-setting and evidence that the off-setting value provides for the required biodiversity compensation, risk factors (including temporal lag), long term management and monitoring (25 years) and a minimum of 10% net gain;
- (d) the site or sites on which the compensation off-setting required pursuant to (c) will be provided together with evidence demonstrating that the site or sites has/have been chosen in accordance with the prioritisation set out in the outline biodiversity and landscape mitigation strategy;
- (e) certified copies of the completed legal agreements with the Environment Bank securing the site or sites identified in (d) and which demonstrate that the off-setting value will be paid to the Environment Bank within 10 days of approval of the biodiversity and landscape mitigation strategy to enable enactment of the biodiversity off-setting scheme and the biodiversity off-setting management and monitoring plan as approved in the biodiversity and landscape mitigation strategy;

- (f) any hard and soft landscaping to be incorporated within Work Nos. 1, 2, 3, 4, 5 and 6 including location, number, species, size of any planting and the management and maintenance regime for such landscaping.

(2) The biodiversity and landscape mitigation strategy must be implemented as approved under sub-paragraph (1).

### **Replacement planting for Work No. 9**

**6.**—(1) No part of Work No. 9 may commence until details—

- (a) of any trees, shrubs and hedgerows to be removed during the construction of Work No. 9; and
- (b) of planting to replace any such identified trees, shrubs and hedgerows,

have been submitted to and approved by the relevant planning authority.

(2) The replacement planting must be carried out in accordance with the approved details and maintained for a period of 12 months.

(3) Any tree, shrub or hedgerow planted as part of the approved details that, within the 12 month maintenance period, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

### **Archaeology**

**7.**—(1) No part of Work Nos. 1, 2, 3, 4, 5 and 9 may commence until a written scheme of archaeological investigation for that part has been submitted to and approved by the relevant planning authority.

(2) The scheme must—

- (a) identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in situ any archaeological features that are identified;
- (b) provide details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found; and
- (c) identify any drilling or boring locations where a phased programme of geoarchaeological works and a phased programme of archaeological works are required.

(3) Any archaeological investigations implemented and measures taken to protect, record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation.

### **Highway access**

**8.**—(1) No part of Work Nos. 6, 8, 9 and 10 may commence until written details of the siting, design and layout of any new permanent or temporary means of access to a highway in that part, or any alteration to an existing means of access to a highway in that part has been submitted to and approved by the relevant planning authority (in consultation with the relevant highway authority).

(2) The highway accesses must be constructed or altered as approved under sub-paragraph (1).

(3) The undertaker must not exercise the power in article 14(1) (permanent stopping up of streets) unless and until a plan showing the layout for the termination of the street (as specified in columns (1) and (2) of Schedule 6) has been submitted to and approved by the relevant planning authority, such plan to show the replacement turning head to facilitate a forward side-turn manoeuvre in forward and reverse gears by vehicles.

### **Surface and foul water drainage**

**9.**—(1) No part of Work Nos. 1, 2, 3, 4, 5, and 6 may commence until written details of the surface and foul water drainage strategy for that part have been submitted to and approved by the relevant planning authority. The written details submitted for approval must be substantially in accordance with the outline drainage strategy.

(2) The surface and foul water drainage system must be constructed as approved under sub-paragraph (1).

### **Ground conditions and ground stability**

**10.**—(1) No part of Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8 may commence until an investigation and assessment report to identify ground conditions and ground stability has been submitted to and approved by the relevant planning authority.

(2) The report submitted pursuant to sub-paragraph (1) must identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) In the event that the report submitted pursuant to sub-paragraph (1) identifies necessary remedial measures, no part of Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8 may commence until a remediation verification plan for that part has been submitted to and approved by the relevant planning authority.

(4) The authorised development must be carried out in accordance with the approved report referred to at sub-paragraph (1) and, where necessary, the approved plan referred to at sub-paragraph (3).

### **Code of construction practice**

**11.**—(1) No part of the pre-commencement works may be carried out and no part of the authorised development may commence until a code of construction practice for that part has been submitted to and approved by the relevant planning authority. The code of construction practice submitted for approval must be substantially in accordance with the outline code of construction practice to the extent that it is applicable to that part and must include the following—

- (a) the construction and phasing programme;
- (b) liaison procedures;
- (c) complaints procedures;
- (d) nuisance management plan including measures to avoid or minimise the impacts of construction works (covering dust, wheel washing, damping of stockpiles, sheeting materials, lighting, noise and vibration);
- (e) reference to undertaking construction activities in accordance with the recommendations of BS 5228 ‘Noise and Vibration Control on Construction Open Sites’ Part 1 Noise and Part 2 Vibration;
- (f) measures to ensure construction, demolition and excavation waste management effectively meets 95% reuse or recycling rates as a minimum;
- (g) statement demonstrating how the development will deliver circular economy outcomes and aim to be net-zero waste. This includes measures for the maintenance of construction equipment and other measures in the development design and construction that improves resource efficiency and innovation to keep products and materials at their highest use for as long as possible;
- (h) measures to ensure the temporary storage of soils and other material of value will be in accordance with best practice;
- (i) installation of hoardings and/or fencing measures;
- (j) measures to ensure the safe storage of polluting materials;

- (k) protocol for flood warning and a flood incident management plan;
- (l) methods to prevent water pollution and adverse impacts upon surface water drainage;
- (m) measures to ensure the restoration of site following completion of construction;
- (n) measures to deal with contamination which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment; and
- (o) appropriate procedures to address any unexploded ordnance that may be encountered.

(2) All construction works must be undertaken in accordance with the approved code of construction practice.

### **Construction Hours**

**12.**—(1) Construction works relating to Work Nos. 1, 2, 3, 4, 5 and 6 must not take place on Sundays, bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0700 to 1300 hours on a Saturday.

(2) The restrictions in sub-paragraph (1) do not apply to construction works where these—

- (a) are carried out within existing buildings or buildings constructed as part of the authorised development;
- (b) are carried out with the prior approval of the relevant planning authority;
- (c) are associated with an emergency; or
- (d) are associated with slip form working.

(3) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individual classes or generally as the case may be) of taking that action.

### **Construction traffic management plan(s)**

**13.**—(1) No part of the pre-commencement works may be carried out and no part of the authorised development may 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 relevant highway authority and Transport for London). A construction traffic management plan(s) must be substantially in accordance with the outline construction traffic management plan and must include the following (as applicable for the part of the authorised development to which the construction traffic management plan relates)—

- (a) construction vehicle routing plans in respect of both workers and deliveries;
- (b) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads;
- (c) site access plans;
- (d) where practicable, proposals for temporary diversions of any public rights of way;
- (e) measures to ensure the protection of users of any footpath within the Order limits which may be affected by the construction of the authorised development;
- (f) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (g) a construction logistics plan;
- (h) a procedure for reviewing and updating the construction traffic management plan(s);
- (i) a construction worker travel plan, including details of the temporal distribution of workers at Work Nos. 5(q), 8 and 9(d), the likely number of worker vehicle movements and the management of workforce parking; and
- (j) appropriate procedures to provide for a vehicle booking management system.

(2) The construction traffic management plan submitted pursuant to sub-paragraph (1) must be accompanied by a statement and associated junction appraisals (as defined in the outline construction traffic management plan) demonstrating how the likely construction traffic impacts identified in the environmental statement are addressed through the measures contained in the construction traffic management plan(s).

(3) The construction traffic management plan(s) submitted pursuant to sub-paragraph (1) that relate to Work Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 must be accompanied by a highways base condition survey (as defined in the outline construction traffic management plan).

(4) The construction traffic management plan(s) and any updated construction traffic management plan(s) submitted following any review must be implemented as approved by the relevant planning authority.

### **Heavy commercial vehicle movements delivering waste**

**14.—**(1) Subject to sub-paragraph (4) the number of two-way vehicle movements made by heavy commercial vehicles delivering waste to Work Nos. 1A and 1B during commissioning and the operational period must not exceed a maximum of 75 two-way vehicle movements per day (75 vehicles in and 75 vehicles out).

(2) Save in the event of a jetty outage, the volume of waste delivered by road to Work No. 1A during commissioning and the operational period must not exceed 130,000 tonnes per calendar year.

(3) The volume of waste delivered by road to Work No. 1B during commissioning and the operational period must not exceed 40,000 tonnes per calendar year.

(4) In the event of a jetty outage, the number of two-way vehicle movements made by heavy commercial vehicles delivering waste to Works Nos. 1A and 1B during commissioning and the operational period must not exceed a maximum of 300 two-way vehicle movements per day (300 vehicles in and 300 vehicles out) and must not exceed—

- (a) between the hours of 0730–0900, a maximum of 30 two-way Heavy Commercial Vehicle movements (30 vehicles in and 30 vehicles out); and
- (b) between the hours of 1630–1800, a maximum of 30 two-way Heavy Commercial Vehicle movements (30 vehicles in and 30 vehicles out).

(5) Save in the event of a jetty outage, 100% of incinerator bottom ash produced by the operation of Work No. 1A must be transported from it by river to a riparian facility.

(6) On a quarterly basis during commissioning and the operational period, and following any reasonable request by the relevant planning authority, the undertaker must provide the relevant planning authority with a record of the following for the preceding period—

- (a) confirmation whether or not a jetty outage occurred; and
- (b) the number of two-way vehicle movements made by heavy commercial vehicles delivering waste as well as the tonnages of waste delivered both to Work No. 1A and Work No. 1B in that period, such number to be split out clearly so that the number of movements and waste tonnages to the authorised development during any jetty outage can be ascertained.

(7) In this article—

“heavy commercial vehicle” has the meaning given by section 138 (meaning of “heavy commercial vehicle”) of the Road Traffic Regulation Act 1984(a);

“jetty outage” means circumstances caused by factors beyond the undertaker’s control in which waste has not or could not be received at the jetty or ash containers have not been or could not be despatched from the jetty for a period in excess of four consecutive days; and

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(a) 1984 c.27, amended by the Road Traffic (Consequential Provisions) act 1988 (c.54), section 4, Schedule 3, paragraph 25(8).

“two-way vehicle movements” means a movement to and a movement from the authorised development.

### **Emission limits – Work No. 1B**

**15.**—(1) In the event that gas is utilised in the CHP engine, during the operational period of Work No. 1B, the average emission limit value for oxides of nitrogen (nitric oxide and nitrogen dioxide expressed as nitrogen dioxide) of the combustion emissions discharged through Work No. 1B must not exceed 125mg/Nm<sup>3</sup> (expressed at 5% oxygen, dry flue gas, 273.15K).

(2) In the event that gas is utilised in the CHP engine, during the operational period of Work No. 1B, the annual mass emissions for oxides of nitrogen (nitric oxide and nitrogen dioxide expressed as nitrogen dioxide) of the combustion emissions discharged through Work No. 1B must not exceed three tonnes per calendar year.

### **Waste hierarchy scheme**

**16.**—(1) Prior to commissioning, the undertaker must submit to the relevant planning authority for approval a scheme, which sets out arrangements for maintenance of the waste hierarchy in priority order and which aims to minimise recyclable and reusable waste received at the authorised development during the commissioning and operational period of the authorised development (the “waste hierarchy scheme”).

(2) The waste hierarchy scheme must include details of—

- (a) the type of information that must be collected and retained on the sources of the residual waste after recyclable and reusable waste has been removed;
- (b) the arrangements that must be put in place for ensuring that as much reusable and recyclable waste as is reasonably possible is removed from waste to be received at the authorised development, including contractual measures to encourage as much reusable and recyclable waste being removed as far as possible;
- (c) the arrangements that must be put in place for ensuring that commercial suppliers of residual waste operate a written environmental management system which includes establishing a baseline for recyclable and reusable waste removed from residual waste and specific targets for improving the percentage of such removed reusable and recyclable waste;
- (d) the arrangements that must be put in place for suspending and/or discontinuing supply arrangements from commercial suppliers who fail to retain or comply with any environmental management systems;
- (e) the arrangements that must be put in place for the provision of an annual waste composition analysis undertaken by the undertaker, with the findings submitted to the relevant planning authority within one month of the sampling being undertaken; and
- (f) the form of records that must be kept for the purpose of demonstrating compliance with (a) to (e) and the arrangements in place for allowing inspection of such records by the relevant planning authority.

(3) The waste hierarchy scheme must be implemented as approved under sub-paragraph (1).

### **Operational worker travel plan**

**17.**—(1) Prior to commissioning of any part of Work Nos. 1, 2, 3, 4 and 5, an operational worker travel plan for those working at the authorised development must be submitted to and approved by the relevant planning authority (in consultation with the relevant highway authority and, for streets within the London Borough of Bexley, Transport for London). The operational worker travel plan must be in substantial accordance with the outline operational worker travel plan and set out measures to encourage staff working at Work Nos. 1, 2, 3, 4 and 5 to use sustainable modes of transport.

(2) The operational worker travel plan must be implemented as approved under sub-paragraph (1).

### **Operational lighting strategy**

**18.**—(1) No part of Work Nos. 1, 2, 3, 4, 5 and 6 may commence until a written scheme for the management and mitigation of operational external artificial light emissions for that part has been submitted to and approved by the relevant planning authority. The written scheme must be substantially in accordance with the outline lighting strategy.

(2) The scheme for the management and mitigation of operational external artificial light emissions must be implemented as approved under sub-paragraph (1).

### **Control of operational noise**

**19.**—(1) Prior to commissioning of any part of Work No. 1, a written noise monitoring scheme must be submitted to and approved by the relevant planning authority, such scheme must specify—

- (a) each location from which noise is to be measured;
- (b) the method of noise measurement, which must be in accordance with British Standard 4142:2014;
- (c) the maximum permitted levels of noise at each monitoring location must not exceed 5dB below the background LA90;
- (d) provision requiring the undertaker to take noise measurements as soon as possible following a reasonable request by the relevant planning authority and to submit the measurements to the relevant planning authority as soon as they are available; and
- (e) a definition of the circumstances that constitute an emergency for the purposes of sub-paragraphs (2)(a), (3) and (5).

(2) The level of noise at each monitoring location must not exceed the maximum permitted level specified for that location in the scheme, except—

- (a) in the case of an emergency (as defined in the noise monitoring scheme);
- (b) with the prior approval of the relevant planning authority; or
- (c) as a result of steam purging or the operation of emergency pressure relief valves or similar equipment of which the undertaker has given notice in accordance with sub-paragraph (3).

(3) Except in the case of an emergency, the undertaker must give the relevant planning authority 48 hours' notice of any proposed steam purging or operation of emergency pressure relief valves or similar equipment.

(4) So far as reasonably practicable, steam purging and the operation of emergency pressure relief valves or similar equipment may only take place:

- (a) between 0900 and 1700 hours on weekdays (excluding bank holidays); and
- (b) between 0900 and 1300 hours on Saturdays (excluding bank holidays).

(5) Where the level of noise at a monitoring location exceeds the maximum permitted level specified for that location in the approved scheme because of an emergency—

- (a) the undertaker must, as soon as possible and in any event within two business days of the beginning of the emergency, submit to the relevant planning authority a statement detailing—
  - (i) the nature of the emergency;
  - (ii) why it is necessary for the level of noise to have exceeded the maximum permitted level;
- (b) if the undertaker expects the emergency to last for more than 24 hours, it must inform local residents and businesses affected by the level of noise at that location of—

- (i) the reasons for the emergency; and
- (ii) how long it expects the emergency to last.

### **River wall**

**20.**—(1) No part of Work No. 1 may commence until a river wall condition survey on those parts of the river wall within the order limits has been submitted to and approved by the Environment Agency (in consultation with the relevant planning authority).

(2) The river wall condition survey submitted pursuant to sub-paragraph (1) must, where appropriate, identify any remedial works required to bring the tidal flood defence up to a good standard considering a design life of 100 years.

(3) The remedial works required to bring the defence up to a good standard identified pursuant to sub-paragraph (2) must be carried out within two years of the date that the condition survey is approved under sub-paragraph (1).

### **Community benefits**

**21.**—(1) No part of the authorised development may commence until an employment and skills plan has been submitted to and approved by the relevant planning authority.

(2) The employment and skills plan must be implemented as approved by the relevant planning authority.

### **Notice of start of commissioning and notice of date of final commissioning**

**22.**—(1) Where practicable, notice of the intended start of commissioning of Work No. 1A must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commissioning is started.

(2) Where practicable, notice of the intended start of commissioning of Work No. 1B must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commissioning is started.

(3) Within seven days of completing final commissioning of each of Work Nos. 1A and 1B, the undertaker must provide the relevant planning authority with notice of the date upon which such commissioning was duly completed.

### **Phasing of construction and commissioning of Work No. 1**

**23.**—(1) Subject to sub-paragraph (2), no part of the authorised development may commence until a phasing programme setting out the commencement of construction and the anticipated start of commissioning and the anticipated date of final commissioning for each of Work Nos. 1A, 1B, 1C, 1D and (if applicable) 2(b) has been submitted to and approved by the relevant planning authority. The phasing programme must provide for the anticipated date of final commissioning of Work No. 1C and Work No. 1D as soon as reasonably practicable. The phasing programme must be implemented as approved by the relevant planning authority.

(2) Work No. 1B must commence construction in the same phase as Work No. 1A.

(3) The steam turbine incorporating at least 30 megawatts heat off-take for district heating must be completed at the anticipated date of final commissioning of Work No. 1A if constructed and installed as part of Work No.1 or if applicable, Work No. 2(b).

### **Combined heat and power**

**24.**—(1) Work No. 1A (and, if applicable, Work No. 2(b)) and Work No. 3 must be constructed to produce combined heat and power through the provision of steam pass-outs and the preservation of space for the future provision of water pressurisation, heating and pumping systems. Prior to the date of final commissioning of Work No. 1A the undertaker must submit to



the relevant planning authority for its approval a report (“the CHP review”) updating the CHP statement.

(2) Prior to establishing the working group pursuant to sub-paragraph (3), the undertaker must submit to the relevant planning authority for approval the terms of reference for the working group together with a list of the organisations, to be invited (such list to include the Greater London Authority) to attend the working group, such terms of reference to include—

- (a) agree the scope of each CHP review;
- (b) agree a list of CHP consultants put forward by the undertaker;
- (c) engage with the Department for Business, Energy & Industrial Strategy (or such successor government department with responsibility for energy) and the Heat Network Investment Programme (or any such equivalent government funding programme) to identify funding for any financial shortfall identified by any CHP review;
- (d) progress the actions in each approved CHP review and to monitor and report on the progress of those actions to the relevant planning authority;
- (e) identify the likely connection point at the site boundary for any district heating;
- (f) identify working practices of the working group; and
- (g) confirmation that any approvals and agreements of the working group must not be unreasonably withheld or delayed.

(3) Work No. 1A must not start commissioning until the undertaker has established a working group pursuant to the approved terms of reference under sub-paragraph (2), that may combine with the working group established in respect of combined heat and power opportunities from RRRF.

(4) The CHP review under sub-paragraph (1) must be undertaken by a competent CHP consultant appointed by the undertaker from the approved list agreed by the working group in sub-paragraph (2)(b) and must be in accordance with the scope agreed by the working group established under sub-paragraph (3) and must—

- (a) assess potential commercial opportunities that reasonably exist within a 10 kilometre radius for the export of heat from Work No. 1 as at the time of submission of the CHP review;
- (b) assess how the opportunities in (a) meet the Combined Heat and Power Quality Assurance requirements;
- (c) state whether or not there is sufficient certainty about the likely district heat network to enable the undertaker to install the necessary combined heat and power pipework (Work No. 6(a)) to the boundary of Work No. 6 as shown on the works plans and, if so, the undertaker must install such pipework to the boundary of Work No. 6 in the timeframe agreed in the CHP review or any revised CHP review; and
- (d) include a list of actions (if any and in addition to (b)) that the undertaker is required to take to increase the potential for the export of heat from Work No. 1 and which are technically and commercially viable.

(5) The undertaker must take such actions (which are technically and commercially viable) as are included within the timescales specified in the approved CHP review and where the working group identifies the likely connection point at the site boundary for any district heating to safeguard a pipework route from Work No. 3 to that point.

(6) Subject to sub-paragraph (8), on each date during the operational period of Work No. 1A that is three years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (1).

(8) In the event that the export of heat from the authorised development is provided pursuant to any CHP review, the undertaker is only required to carry out and submit any further CHP reviews every five years.

### **Use of compost material and gas from Work No. 1B**

**25.**—(1) Prior to the date of final commissioning, the undertaker must submit to the relevant planning authority for its approval a report (“the Anaerobic Digestion review”) on the potential use of the compost material and gas produced from Work No. 1B.

(2) The Anaerobic Digestion review must—

- (a) consider the opportunities that reasonably exist for the export of the compost material produced from Work No. 1B for use as a fertiliser;
- (b) consider the opportunities that reasonably exist for the export of the gas produced from Work No. 1B to the gas grid network; and
- (c) identify any technically and commercially viable actions that the undertaker can reasonably carry out in order to progress the identified opportunities together with the timescales of such actions, including measures to ensure that the quality of the compost material and gas is optimised to the prevailing technical standards to allow beneficial use.

(3) The undertaker must carry out any identified technically and commercially viable actions within the timescales specified in the approved Anaerobic Digestion review.

(4) Subject to sub-paragraphs (6) and (7), on each date during the operational period of Work No. 1B that is two years after the date on which it last submitted the Anaerobic Digestion review or a revised Anaerobic Digestion review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised Anaerobic Digestion review.

(5) Subject to sub-paragraphs (6) and (7), sub-paragraphs (2) and (3) apply in relation to a revised Anaerobic Digestion review submitted under sub-paragraph (4) in the same way as they apply in relation to the Anaerobic Digestion review submitted under sub-paragraph (1).

(6) The undertaker is only required to consider the technically and commercially viable opportunities that reasonably exist for the export of the gas produced from Work No. 1B to the gas grid network in the first Anaerobic Digestion review submitted on the date that is 12 months after the date of final commissioning of Work No. 1B.

(7) In the event that the export of compost material produced from Work No. 1B is provided pursuant to any Anaerobic Digestion review or any revised Anaerobic Digestion review, the undertaker is only required to carry out and submit any further Anaerobic Digestion reviews every three years.

(8) Compost material produced from Work No. 1B must be used for compost where it meets the necessary quality standards and where a technically and commercially viable market exists.

(9) Gas produced from Work No. 1B must be used for electricity generation, heating or as a vehicle fuel (save in the case of emergency) where it meets the necessary quality standards and where a technically and commercially viable market exists.

### **Decommissioning**

**26.**—(1) Within 24 months of the permanent cessation of the operation of Work No. 1, details of a scheme for the restoration and aftercare of the land for Work Nos. 1, 2, 3, 4 and 5 must be submitted to and approved by the relevant planning authority. The scheme must include details of structures and buildings to be demolished or retained, details of the means of removal of materials following demolition, phasing of demolition and removal, details of restoration works and phasing thereof.

(2) The scheme as approved under sub-paragraph (1) must be implemented in accordance with the phasing set out therein.

### **Amendments to approved details**

27.—(1) With respect to the documents certified under article 40 (certification of plans etc) the parameters specified in the table in requirement 3 and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together “Approved Documents, Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### **Flood Risk Activity Permit Area**

28. No building will be erected within the area defined by the red dotted line annotated as ‘16m FRAP Line’ on the FRAPA drawings and no material will be stored, within the area defined by the red dotted line annotated as ‘16m FRAP Line’ on the FRAPA drawings, which could create a risk of damage to the integrity of the flood defence structure within this area.

### **Finished Floor Levels**

29. The finished floor levels of Work Nos 1, 2, 3, 4, 5 and 6 must be set at a minimum of 2.97 metres AOD.

### **Metropolitan Open Land**

30. No building will be erected on any part of the land hatched orange on the MOL plan.

### **Delivery and Servicing Plan**

31.—(1) No part of the authorised development may be commissioned until a delivery and servicing plan (relating to all deliveries to the authorised development other than for deliveries within requirement 14 (Heavy commercial vehicle movements delivering waste)) has been submitted to and approved by the relevant planning authority. The delivery and servicing plan must include the following—

- (a) measures to ensure efficiency of the site and reduction in vehicle numbers as far as possible; and
- (b) an assessment of how the authorised development accords with the best practice guidance published by Transport for London.

(2) The delivery and servicing plan must be implemented as approved under sub-paragraph (1).

### **Tonnage cap**

32.—(1) The total amount of waste to be received at Work No. 1A must not exceed 805,920 tonnes per calendar year.

(2) The total amount of waste to be received at Work No. 1B must not exceed 40,000 tonnes per calendar year.

### **Notification from the undertaker**

33. Prior to the pre-commencement works, Cory Environmental Holdings Limited or a person to whom the benefit of this Order has been transferred under article 9 (consent to transfer benefit

of the Order) (as applicable) must notify the relevant planning authority that they are the undertaker for the purposes of this Order and, as the undertaker, has the benefit of the provisions of this order pursuant to article 8 as well as the liabilities and obligations under this Order.

SCHEDULE 3

Article 11

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the London Borough of Bexley	Norman Road	Works for the provision of a new permanent access and works to alter an existing access (works forming part of Work No. 6) between the points marked C and D on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BS and BT on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BU and BV on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BK and BL on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BO and BP on sheet 3 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BQ and BR on sheet 3 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works for the installation and maintenance of Work Nos. 6 and 9 in the street between the points marked C and D on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works for the installation and maintenance of Work Nos. 7 and 9 in the street between the points marked D and

		H on sheets 2 and 3 of the access and public rights of way plan
In the London Borough of Bexley	FP2	Works for the installation and maintenance of Work No. 9 in the public right of way between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan
In the London Borough of Bexley	FP2	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan
In the London Borough of Bexley	FP4	Works for the installation and maintenance of Work No. 7 and Work No. 9 in the public right of way between the eastern edge of the order limits and Norman Road on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	FP4	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 7 and Work No. 9) between the eastern edge of the order limits and Norman Road on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	Picardy Manorway / Anderson Way / Bronze Age Way	Works for the installation and maintenance of Work No. 9 in the street between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan
In the London Borough of Bexley	Picardy Manorway / Anderson Way / Bronze Age Way	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan
In the London Borough of Bexley	Bronze Age Way / Queen's Road	Works for the installation and maintenance of Work No. 9 in the street between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan
In the London Borough of Bexley	Bronze Age Way / Queen's Road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan
In the London Borough of Bexley	Queen's Road / Northend Road	Works for the installation and maintenance of Work No. 9 in the street between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan
In the London	Queen's Road / Northend	Works for the provision of temporary

Borough of Bexley	Road	accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan
In the London Borough of Bexley	Northend Road / Thames Road	Works for the installation and maintenance of Work No. 9 in the street between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan
In the London Borough of Bexley	Northend Road / Thames Road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the installation and maintenance of Work No. 9 in the street between the points marked L, AX and M on sheet 11 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked L, AX and M on sheet 11 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the installation and maintenance of Work No. 9 in the street between the points marked M and P on sheets 11 and 12 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points M and P on sheets 11 and 12 of the access and public rights of way plan
In the London Borough of Bexley	FP29	Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked N and O on sheet 11 of the access and public rights of way plan
In the London Borough of Bexley	FP29	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked N and O on sheet 11 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the installation and maintenance of Work No. 9 in the street between the points marked P and Q on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the provision of temporary accesses and works to temporarily alter

		existing accesses (works forming part of Work No. 9) between the points marked P and Q on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the installation and maintenance of Work No. 9 in the street between the points marked Q and X on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked Q and X on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	FP249	Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked T and U on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	FP249	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked T and U on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	BY105	Works for the installation and maintenance of Work No. 9 in the public right of way at the point marked R on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	BY105	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) at the point marked R on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	BY104	Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked V and W on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	BY104	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked V and W on sheet 12 of the access and public rights of way plan
In the Borough of Dartford	Thames Road / Bob Dunn Way	Works for the installation and maintenance of Work No. 9 in the street between the points marked X and Y on sheets 12 and 13 of the access and public rights of way plan
In the Borough of Dartford	Thames Road / Bob Dunn Way	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of



		Work No. 9) between the points marked X and Y on sheets 12 and 13 of the access and public rights of way plan
In the Borough of Dartford	Thames Road / Bob Dunn Way	Works for the installation and maintenance of Work No. 9 in the street between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan
In the Borough of Dartford	Thames Road / Bob Dunn Way	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan
In the Borough of Dartford	DB5	Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AB and AC on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB5	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AB and AC on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB5	Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AA and Z on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB5	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AA and Z on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB5	Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AC and Z on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB5	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AC and Z on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB1	Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AD and AE on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB1	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked

		AD and AE on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB1	Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AD and AF on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB1	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AD and AF on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	Bob Dunn Way / Joyce Green Lane	Works for the installation and maintenance of Work No. 9 in the street between the points marked AG and BS on sheet 14 of the access and public rights of way plan
In the Borough of Dartford	Bob Dunn Way / Joyce Green Lane	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AG and BS on sheet 14 of the access and public rights of way plan
In the Borough of Dartford	Joyce Green Lane / private road	Works for the installation and maintenance of Work No. 9 in the street between the points marked BS and AZ on sheet 14 of the access and public rights of way plan
In the Borough of Dartford	Unnamed path between private road / un-named minor road	Works for the installation and maintenance of Work No. 9 in the area between the points marked AZ and BT on sheet 14 of the access and public rights of way plan
In the Borough of Dartford	un-named minor road / private road	Works for the installation and maintenance of Work No. 9 in the street between the points marked BT and BB on sheet 14 of the access and public rights of way plan
In the Borough of Dartford	un-named minor road / private road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked BT and BB on sheet 14 of the access and public rights of way plan
In the Borough of Dartford	private road	Works for the installation and maintenance of Work No. 9 in the street between the points marked BC and AX on sheets 14 and 15 of the access and public rights of way plan
In the Borough of Dartford	private road	Works for the installation and maintenance of Work No. 9 in the street between the points marked AX and AZ on sheet 15 of the access and public rights of way plan
In the Borough of	Marsh Street North	Works for the installation and

Dartford		maintenance of Work No. 9 in the street between the points marked AY and BA on sheet 15 of the access and public rights of way plan
In the Borough of Dartford	DB3	Works for the installation and maintenance of Work No. 9 in the street between the points marked BE and BD on sheet 15 of the access and public rights of way plan
In the Borough of Dartford	private road / Littlebrook Manorway	Works for the installation and maintenance of Work No. 9 in the street between the points marked AZ and BF on sheet 15 of the access and public rights of way plan
In the Borough of Dartford	Littlebrook Manorway / private road	Works for the installation and maintenance of Work No. 9 in the street between the points marked BF, BG and BI on sheets 15 and 16 of the access and public rights of way plan
In the Borough of Dartford	Littlebrook Manorway / private road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked BF, BG and BI on sheets 15 and 16 of the access and public rights of way plan
In the Borough of Dartford	private road	Works for the installation and maintenance of Work No. 9 in the street between the points marked BI and BJ on sheet 16 of the access and public rights of way plan

SCHEDULE 4

Articles 12 and 15

STREETS SUBJECT TO PERMANENT AND TEMPORARY  
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the London Borough of Bexley	Norman Road	Works for the provision of a new permanent access and works to alter an existing access (works forming part of Work No. 6) between the points marked C and D on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BK and BL on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BO and BP on sheet 3 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BQ and BR on sheet 3 of the access and public rights of way plan

**PART 2**  
**TEMPORARY ALTERATION OF LAYOUT**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the London Borough of Bexley	Norman Road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BS and BT on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	Norman Road	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BU and BV on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	FP2	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan
In the London Borough of Bexley	FP4	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 7 and Work No. 9) between the eastern edge of the order limits and Norman Road on sheet 2 of the access and public rights of way plan
In the London Borough of Bexley	Picardy Manorway / Anderson Way / Bronze Age Way	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan
In the London Borough of Bexley	Bronze Age Way / Queen's Road	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan
In the London Borough of Bexley	Queen's Road / Northend Road	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan
In the London	Northend Road / Thames	Works for the provision of temporary

Borough of Bexley	Road	accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked L, AX and M on sheet 11 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points M and P on sheets 11 and 12 of the access and public rights of way plan
In the London Borough of Bexley	FP29	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked N and O on sheet 11 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked P and Q on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	Thames Road	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked Q and X on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	FP249	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked T and U on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	BY105	Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) at the point marked R on sheet 12 of the access and public rights of way plan
In the London Borough of Bexley	BY104	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked V and W on sheet 12 of the access and public rights of way plan
In the Borough of Dartford	Thames Road / Bob Dunn Way	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work

		No. 9) between the points marked X and Y on sheets 12 and 13 of the access and public rights of way plan
In the Borough of Dartford	Thames Road / Bob Dunn Way	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan
In the Borough of Dartford	DB5	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AB and AC on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB5	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AA and Z on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB5	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AC and Z on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB1	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AD and AE on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	DB1	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AD and AF on sheet 13 of the access and public rights of way plan
In the Borough of Dartford	Bob Dunn Way / Joyce Green Lane	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AG and BS on sheet 14 of the access and public rights of way plan
In the Borough of Dartford	un-named minor road / private road	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked BT and BB on sheet 14 of the access and public rights of way plan
In the Borough of Dartford	Littlebrook Manorway / private road	Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked BG and BI on sheets 15 and 16 of the access

		and public rights of way plan
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SCHEDULE 5

Article 13

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF  
STREETS OR PUBLIC RIGHTS OF WAY

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
In the London Borough of Bexley	FP3	Temporary closure of that part of the public right of way shown between the points marked A and B on sheet 2 of the access and public rights of way plan to install and facilitate the construction of Work No. 6
In the London Borough of Bexley	access road	Temporary closure of that part of the street hatched blue between the points marked C and D on sheet 2 of the access and public rights of way plan to install and facilitate the construction of Work Nos. 6 and 9
In the London Borough of Bexley	Norman Road	Temporary closure of that part of the street shown between the points marked D and H on sheets 2 and 3 of the access and public rights of way plan to install and facilitate the construction of Work Nos. 7 and 9
In the London Borough of Bexley	FP2	Temporary closure of that part of the public right of way shown between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	FP4	Temporary closure of that part of the public right of way shown between the eastern edge of the order limits and Norman Road on sheet 2 of the access and public rights of way plan to install and facilitate the construction of Work No. 7 and Work No. 9
In the London Borough of Bexley	Picardy Manorway / Anderson Way / Bronze Age Way	Temporary closure of that part of the street shown between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	Bronze Age Way / Queen's Road	Temporary closure of that part of the street (up to half the width) shown between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan to install and facilitate the construction of Work No. 9

In the London Borough of Bexley	Queen's Road / Northend Road	Temporary closure of that part of the street (up to half the width) shown between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	Northend Road / Thames Road	Temporary closure of that part of the street (up to half the width) shown between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	Thames Road	Temporary closure of that part of the street (up to half the width) shown between the points marked L, AX and M on sheet 11 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	Thames Road	Temporary closure of that part of the street (up to half the width) shown between the points marked M and P on sheets 11 and 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	FP29	Temporary closure of that part of the public right of way shown between the points marked N and O on sheet 11 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	Thames Road	Temporary closure of that part of the street (up to half the width) shown between the points marked P and Q on Sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	Thames Road	Temporary closure of that part of the street (up to half the width) shown between the points marked Q and X on sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	FP249	Temporary closure of that part of the public right of way shown between the points marked T and U on sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	BY105	Temporary closure of that part of the public right of way shown at the point marked R on sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the London Borough of Bexley	BY104	Temporary closure of that part of the public right of way shown between the points marked V and W on sheet 12 of

		the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	Thames Road / Bob Dunn Way	Temporary closure of that part of the street (up to half the width) shown between the points marked X and Y on sheets 12 and 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	Thames Road / Bob Dunn Way	Temporary closure of that part of the street (up to half the width) shown between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	DB5	Temporary closure of that part of the public right of way shown between the points marked AB and AC on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	DB5	Temporary closure of that part of the public right of way shown between the points marked AA and Z on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	DB5	Temporary closure of that part of the public right of way shown between the points marked AC and Z on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	DB1	Temporary closure of that part of the public right of way shown between the points marked AD and AE on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	DB1	Temporary closure of that part of the public right of way shown between the points marked AD and AF on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	Bob Dunn Way / Joyce Green Lane	Temporary closure of that part of the street (up to half the width) shown between the points marked AG and BS on sheet 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	Joyce Green Lane / private road	Temporary closure of that part of the street (up to half the width) shown between the points marked BS and AZ on sheet 14 of the access and public rights of way plan to install and facilitate the

		construction of Work No. 9
In the Borough of Dartford	unnamed path between private road / un-named minor road	Temporary closure of that part of the unnamed path shown between the points marked AZ and BT on sheet 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	un-named minor road / private road	Temporary closure of that part of the street shown between the points marked BT and BB on sheet 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	private road	Temporary closure of that part of the street shown between the points marked BC and AX on sheets 14 and 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	private road	Temporary closure of that part of the street shown between the points marked AX and AZ on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	Marsh Street North	Temporary closure of that part of the street shown between the points marked AY and BA on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	DB3	Temporary closure of that part of the public right of way shown between the points marked BE and BD on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	private road / Littlebrook Manorway	Temporary closure of that part of the street (up to half the width) shown between the points marked AZ and BF on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	Littlebrook Manorway / private road	Temporary closure of that part of the street (up to half the width) shown between the points marked BF, BG and BI on sheets 15 and 16 of the access and public rights of way plan to install and facilitate the construction of Work No. 9
In the Borough of Dartford	private road	Temporary closure of that part of the street (up to half the width) shown between the points marked BI and BJ on sheet 16 of the access and public rights of way plan to install and facilitate the construction of Work No. 9

SCHEDULE 6

Article 14

PERMANENT STOPPING UP OF STREETS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
In the London Borough of Bexley	Norman Road	That part of the street coloured green between the points marked C and D on sheet 2 of the access and public rights of way plan

## SCHEDULE 7

Article 24

### LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

#### Interpretation

1. In this Schedule—

“Work No. 6 infrastructure” means any works or development comprised within Work No. 6 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans;

“Work No. 7 infrastructure” means any works or development comprised within Work No. 7 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 7 on the works plans;

“Work No. 8 infrastructure” means any works or development comprised within Work No. 8 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8 on the works plans;

“Work No. 9 infrastructure” means any works or development comprised within Work No. 9 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9 on the works plans;

“Work No. 9(a) and (b) infrastructure” means any works or development comprised within Work No. 9(a) and Work No. 9(b) only in Schedule 1; and

“Work No. 10 infrastructure” means any works or development comprised within Work No. 10 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 10 on the works plans.

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
02/01, 02/03, 02/10, 02/13, 02/14, 02/15, 02/18, 02/19, 02/25, 02/29, 02/31, 02/32, 02/38	For and in connection with the Work No. 6 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to protect the Work No. 6 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
02/33, 02/34, 02/45, 02/46, 02/47, 02/50	For and in connection with the Work No. 7 infrastructure and Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant

	and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure and Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure and Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure and Work No. 9 infrastructure, including the right to protect the Work No. 7 infrastructure and Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
02/43, 02/44, 02/48, 02/49, 02/51	For and in connection with the Work No. 7 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to protect the Work No. 7 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
02/33, 02/54, 02/57 03/03, 03/04, 03/11, 03/12, 03/13 04/01, 04/02 05/01 06/01, 06/02, 06/03, 06/04 07/02, 07/09, 07/10 09/01 11/01, 11/03 12/01, 12/03, 12/04, 12/05, 12/06, 12/06(a), 12/06(b), 12/08, 12/09, 12/11, 12/13, 12/14,	For and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or

12/15, 12/16, 12/16(a), 12/17, 12/17(a), 12/17(b) 12/18, 12/19	composition of the land.
13/01, 13/02, 13/03, 13/04, 13/05, 13/06, 13/07, 13/08, 13/09, 13/11, 13/13, 13/14, 13/15, 13/18	
14/01, 14/02, 14/03, 14/04, 14/04(a), 14/04(b), 14/06, 14/07, 14/08, 14/09	
15/01, 15/02, 15/03, 15/05	
16/01, 16/02	
03/06, 03/10	For and in connection with the Work No. 8 infrastructure and Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure and Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 infrastructure and Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 8 infrastructure and Work No. 9 infrastructure, including the right to protect the Work No. 8 infrastructure and Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
07/03, 07/04, 07/05	At footbridge level only: for and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
07/06, 07/08	At road level only: for and in connection with the Work No. 9 infrastructure, the right for the



	<p>undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
11/02, 12/10, 12/12	<p>At road level (and below) only: for and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
07/03, 07/06, 07/07, 07/08	<p>At railway level only: for and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the maintenance of the Work No. 9 infrastructure along with the right to prevent interference with or obstruct access from and to the Work No. 9 infrastructure.</p>
16/03	<p>For and in connection with the Work No. 9 infrastructure and Work No. 10 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure and Work No. 10 infrastructure, and a right of</p>

	<p>support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure and Work No. 10 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure and Work No. 10 infrastructure, including the right to protect the Work No. 9 infrastructure and Work No. 10 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
16/04	<p>For and in connection with the Work No. 10 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 10 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 10 infrastructure, or interfere with or obstruct access from and to the Work No. 10 infrastructure, including the right to protect the Work No. 10 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>

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

**Compensation enactments**

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to 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 restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5—

- (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”.

**3.—**(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in paragraph 2(2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Riverside Energy Park Order 2020);
- (b) the acquiring authority is subsequently required by a determination under paragraph 27 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the Riverside Energy Park Order 2020) 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 where it entered on that land for the purpose of exercising that right.”.

**Application of Part 1 of the 1965 Act**

**4.** Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29) to the acquisition of land under article 22, applies to the compulsory acquisition of a right by the creation of a new right under article 24—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

**5.—**(1) The modifications referred to in paragraph 4(a) are as follows.

(2) 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—

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(a) 1973 c.26.

- (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 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) (refusal to convey, failure to make title etc.);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (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 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 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 applied to compulsory acquisition under article 22), 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 (powers of entry: further notices of entry), 11B (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 29(3) is also modified 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, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

## “SCHEDULE 2A

### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

#### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4

(execution of declaration) of the 1981 Act as applied by article 28 (application of the 1981 Act) of the Riverside Energy Park Order 2020 in respect of the land to which the notice to treat relates.

(2) But see article 25 (acquisition of subsoil only) of the Riverside Energy Park Order 2020 which excludes the acquisition of subsoil only from this Schedule.

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

### **Counter-notice requiring purchase of land**

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

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

### **Response to counter-notice**

5. 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.

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

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

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

9. 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 Upper Tribunal**

10. 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.

11. In making its 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.

**12.** 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 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the 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.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six 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 they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 9

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of plot shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
In the London Borough of Bexley	2/43, 2/44, 2/48, 2/49, 02/52, 03/05	Temporary use as laydown, construction compound, construction use and accesses for as described in Work No. 8
In the Borough of Dartford	13/12	Temporary use as laydown, construction compound and construction use as described in Work No. 9c

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF RRRL

1. For the protection of RRRL as referred to in this part of this Schedule the following provisions have effect unless otherwise agreed in writing between the undertaker and RRRL.

2. In this part of this Schedule

“access road” means that part of the access road known as Norman Road between points C and D on the access and public rights of way plan;

“alternative apparatus” means alternative apparatus adequate to enable RRRL to fulfil its functions in a manner no less efficient than previously;

“apparatus” means any electric cables, electrical plant, drains, mains, sewers, pipes, conduits or any other apparatus belonging to or maintained by RRRL and used for, or for purposes connected with, waste treatment and disposal and the generation, transmission, distribution or supply of electricity and/or heat generated at the RRRL facility and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 of this Order;

“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, across, along or upon such land;

“internal street” means any roads that service the RRRL facility and which are located within the RRRL facility perimeter;

“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;

“RRRL facility” means the energy from waste facility and associated infrastructure at Norman Road, Belvedere, Bexley, Kent;

“RRRL facility perimeter” means that part of the Order land identified as plots 02/01, 02/03, 02/10, 02/13, 02/14, 02/15, 02/18, 02/19, 02/25, 02/29, 02/31 and 02/32 on the land plans;

“RRRL land” means that part of the Order land in the freehold ownership of RRRL which, as at the date upon which this Order comes into force pursuant to Article 1, are those plots identified as being in the freehold ownership of RRRL in the book of reference but always excluding plots 02/43, 02/44, 02/47, 02/48, 02/49, and 02/51;

3. Upon the permanent stopping up of the access road pursuant to article 14 (permanent stopping up of streets), the undertaker must afford to RRRL the rights for RRRL and all persons authorised on its behalf to enter and pass and re-pass, on foot and/or with or without vehicles, plant and machinery, for all purposes in connection with its occupation and use of the RRRL facility.

4. The undertaker must not install pipes for the offtake of waste heat from the authorised development without first giving RRRL the option to combine its pipes with any pipes for the offtake of waste heat from the authorised development. The undertaker must have regard to any consultation responses received from RRRL when finalising the location of pipes for the offtake of waste heat from the authorised development.

5. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary prohibition or restriction of use of streets and public rights of



way), RRRL is at liberty at all times to take all necessary access across any street used to access the RRRL facility and which has been temporarily stopped up under article 13 and/or any internal street and to execute and do all such works and things in, upon or under any such street used to access the RRRL facility that has been temporarily stopped up under article 13 and/or internal street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction is in that street used to access the RRRL facility and has been temporarily stopped up under article 13 or internal street.

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

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker:—

(a) acquires any interest in the RRRL land in which any apparatus is placed or over which access to any apparatus is enjoyed; or

(b) requires that RRRL's apparatus within the RRRL land is relocated, diverted or removed, any right of RRRL to any part of the RRRL land and/or to maintain that apparatus in that land and to gain access to it must not be extinguished, and that apparatus must not be relocated, diverted or removed, until equivalent rights have been granted to RRRL for alternative apparatus and equivalent alternative apparatus has vested in RRRL and (in relation to apparatus) has been constructed and is in operation, and access to it has been provided. The location of equivalent alternative apparatus and rights for the equivalent alternative apparatus must in each case be agreed between the undertaker and RRRL before any step is taken to extinguish, relocate, divert or remove as aforesaid.

(2) If, for the purpose of executing any works in, on or under the RRRL land, the undertaker requires the relocation, diversion or removal of any apparatus placed in the RRRL land, the undertaker must give to RRRL for approval written notice of that requirement, a plan and section of the work proposed and of the proposed position of the alternative apparatus together with a timetable for when the alternative apparatus is to be provided or constructed by the undertaker.

(3) The approval of RRRL under sub-paragraph (2) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which the notice, plan, section and timetable have been supplied to RRRL, RRRL has not intimated approval or disapproval of such notice, plan, section and timetable and the grounds of disapproval, RRRL is deemed to have approved the said notice, plan, section and timetable as submitted.

(4) When giving its approval under sub-paragraph (2), RRRL may specify such reasonable requirements that are necessary in the provision or construction of the alternative apparatus.

(5) In the event that RRRL issues a disapproval to the notice, plan, section and timetable within the 28 day period referred to in sub-paragraph (3), the undertaker may refer the matter to arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(6) Subject to sub-paragraph (8), any alternative apparatus to be provided or constructed pursuant to this paragraph must be provided or constructed by the undertaker within a timescale, to a standard and in such manner and in such line or situation as is agreed with RRRL or in default of agreement settled by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(7) Where the alternative apparatus is to be provided or constructed on land of the undertaker and once the undertaker has provided or constructed the alternative apparatus, the undertaker must grant RRRL the necessary rights to access and maintain the alternative apparatus on that land.

(8) If in the approval to the notice, plan, section and timetable under sub-paragraph (2) or by the end of the period of 28 days beginning with the date on which the arbitrator settles the alternative apparatus to be provided or constructed, RRRL gives notice to the undertaker that it desires to provide or construct the alternative apparatus and this is agreed to by the undertaker, (acting reasonably) RRRL, after the grant to RRRL of the rights as are referred to in sub-paragraph (9), must proceed without unnecessary delay to provide and 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.

(9) Where RRRL is to provide or construct the alternative apparatus, and the alternative apparatus is to be provided or constructed on land of the undertaker, the undertaker must grant RRRL the necessary rights to provide or construct the alternative apparatus on that land and grant RRRL the necessary rights to access and maintain the alternative apparatus on that land.

**8.**—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to RRRL rights in land of the undertaker for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those rights must be granted upon such terms and conditions as may be agreed between the undertaker and RRRL or in default of agreement settled by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

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

**9.**—(1) Not less than 28 days before starting the execution of any works in, on or under the RRRL land that may materially affect the operation of the RRRL facility, the undertaker must submit to RRRL for approval a plan, section and description of the works to be executed and a timetable for when such works are to be carried out.

(2) The approval of RRRL 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 the plan, section, description and timetable have been supplied to RRRL, RRRL has not intimated disapproval of such plan, section, description and timetable and the grounds of disapproval, RRRL is deemed to have approved the said plan, section description and timetable as submitted.

(3) When giving its approval under sub-paragraph (1), RRRL may specify such reasonable requirements which in RRRL's opinion are necessary in the execution of the works.

(4) The works described in sub-paragraph (1) must be executed only in accordance with the plan, section, description and timetable submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be given in accordance with sub-paragraph (3) by RRRL. Where RRRL reasonably 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 RRRL's reasonable satisfaction prior to the works described in sub-paragraph (1).

(5) In the event that RRRL issues a disapproval to the plan, section, description and timetable within the 28 day period referred to in sub-paragraph (1), the undertaker may refer the matter to arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(6) 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, 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.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works (as defined in the 1991 Act) but in that case it must give to RRRL 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-paragraphs (3) and (4) in so far as is reasonably practicable in the circumstances.

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to RRRL the reasonable expenses incurred by RRRL in, or in connection with, the inspection, removal, alteration or protection of any apparatus within the RRRL land or the provision or

construction of any alternative apparatus which RRRL elects to carry out itself as referred to in paragraph 7(8).

(2) There is to 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, 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 (procedures in relation to certain approvals etc.) 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 RRRL by virtue of sub-paragraph (1) will 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 7(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to RRRL 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 RRRL 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.

**11.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and RRRL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**12.** Where in consequence of the proposed construction or maintenance of any part of the authorised development, the undertaker or RRRL requires the removal of apparatus or RRRL makes requirements for the protection or alteration of apparatus, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution and maintenance of the authorised development and taking into account the need to ensure the safe and efficient operation of RRRL's undertaking and RRRL shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

**13.** If in consequence of any agreement reached 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 RRRL to maintain or use the apparatus no less effectively than was possible before such obstruction.

**14.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any part 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 him) in the course of carrying out such works, use or maintenance, including without limitation works carried out by the undertaker under this Part of this Schedule or

any subsidence resulting from any of these works, 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 the authorised development) or property of RRRL, or there is any interruption in any service provided, or in the supply of any goods, by RRRL, or RRRL becomes liable to pay any amount to any third party, the undertaker will:–

- (a) bear and pay on demand the cost reasonably incurred by RRRL in making good such damage or restoring the supply; and
- (b) indemnify RRRL for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from RRRL, by reason or in consequence of any such damage or interruption or RRRL becoming liable to any third party as aforesaid other than arising from any default of RRRL.

(2) The fact that any act or thing may have been done by RRRL on behalf of the undertaker or in accordance with a plan approved by RRRL or in accordance with any requirement of RRRL or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless RRRL fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and RRRL.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of:–

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of RRRL, its officers, servants, contractors or agents; and
- (b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by RRRL as an assignee, transferee or lessee of a person with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus, any part of the authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 14.

(4) RRRL must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) RRRL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 14 applies. If requested to do so by the undertaker, RRRL shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 14 for claims reasonably incurred by RRRL.

**15.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of any works carried out by RRRL pursuant to this Part of this Schedule or in consequence of the use, maintenance or failure of any part of the RRRL facility by or on behalf of RRRL or in consequence of any act or default of RRRL (or any person employed or authorised by him) in the course of carrying out such works, use or maintenance, including without limitation works carried out by RRRL under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any part of the authorised development or property of the undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the undertaker, or the undertaker becomes liable to pay any amount to any third party, RRRL will:–

- (a) bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and
- (b) indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid other than arising from any default of the undertaker.

(2) The fact that any act or thing may have been done by the undertaker on behalf of RRRL or in accordance with a plan approved by the undertaker or in accordance with any requirement of the undertaker or under its supervision will not (unless sub-paragraph (3) applies), excuse RRRL from liability under the provisions of this sub-paragraph (1) unless the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and RRRL.

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

(4) The undertaker must give RRRL reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting RRRL and considering their representations.

(5) The undertaker must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 15 applies. If requested to do so by RRRL, the undertaker shall provide an explanation of how the claim has been minimised. RRRL shall only be liable under this paragraph 15 for claims reasonably incurred by the undertaker.

## PART 2

### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

**16.** The provisions of this Part have effect for the protection of a utility undertaker unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

**17.** In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term in this paragraph, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by the utility undertaker for the purposes of electricity supply;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
  - (i) mains, pipes or other water apparatus belonging to or maintained by the utility undertaker for the purposes of water supply; and
  - (ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991(b); and
- (d) in the case of a sewerage undertaker within paragraph (d) of the definition of that term—
  - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; 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(a) or an

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(a) 1989 c.29.

(b) 1991 c.56.

agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works, at future date) of that Act,

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 in each case 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; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986**(b)**;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning 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.

**18.** 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 Part 3 (water supply) of the Water Industry Act 1991.

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

**20.** 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.

**21.—(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 over which access to any apparatus is enjoyed 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 and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, 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 written notice of that requirement, together with a plan and section 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

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(a) 1991 c.56. Section 102 was amended by sections 96(1)(a), 96(1)(b), 96(1)(c), 96(1)(d) and 96(1)(e) of the Water Act 2003 c.37 and paragraph 90 of Schedule 7 to the Water Act 2014 c.21.

(b) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

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 reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(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(3) (procedures in relation to certain approvals etc.).

(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(3), 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 it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay in accordance with plans approved by the utility undertaker (such approval not to be unreasonably withheld or delayed and may be subject to such reasonable conditions as the utility undertaker deems necessary), under the superintendence (if given) of the utility undertaker and to the reasonable satisfaction of the utility undertaker.

**22.—**(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 must 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(3).

(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.

**23.—**(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 21(2) the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description 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) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are 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 16 to 22 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(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, 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.

(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, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**24.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses 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 21(2).

(2) There is to 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, 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,

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(3) 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 the utility undertaker in question by virtue of sub-paragraph (1) is to 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 21(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(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 seven years and six 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.

**25.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 21(2), 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 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) Nothing in sub-paragraph 21(2) 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.

(3) 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

### PART 3

#### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**27.—**(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<sup>(a)</sup>;

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

“the electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit 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 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State 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; and

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

**28.** The exercise of the powers of article 33 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

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

- (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 those works), or other property of an operator; or

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(a) 2003 c.21.

(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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or 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(3) (procedures in relation to certain approvals etc.).

**30.** This Part of this Schedule does not apply to—

- (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 damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**31.** 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 laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 4

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**32.—**(1) The following provisions shall 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;

“building” includes any structure or erection or any part of a building, structure or erection;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” shall be construed accordingly;

“damage” includes (but is not limited to) scouring, erosion, loss of structural integrity and environmental damage to any drainage work or any flora or fauna dependent on the aquatic environment, and “damaged” is to be construed accordingly;

“drainage work” means 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 flood defence or tidal monitoring;

“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;

“non-tidal main river” means any part of a main river that is not a tidal main river;

“tidal main river” means that part of a main river downstream of the normal tidal limit;

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work on a Tidal Main River, 8 metres of a drainage work on a non-tidal main rivers or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
  - (b) affect the flow, purity or quality in any main river;
  - (c) affect the conservation, distribution or use of water resources; or
  - (d) affect the conservation value of the main river and habitats in its immediate vicinity; and
- “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

**33.** The provisions within this Part shall not apply where a matter would fall within the remit of the Lead Local Flood Authority under the Land Drainage Act 1991(a).

**34.—(1)** Before beginning to construct any specified work, the undertaker must submit to the Agency for its approval plans of the specified work together with the details of the positioning of any structure within the main river and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably require.

(2) Any submission made by the undertaker under sub-paragraph (1), and any approval given by the Agency under this sub-paragraph, may be in respect of all or part of a specified work.

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency under sub-paragraph (1) or settled in accordance with paragraph 43 where applicable, and in accordance with any reasonable conditions or requirements specified under this paragraph.

(4) 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 two 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 for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(5) 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 (4)(b).

**35.** Without limiting paragraph 34, 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.

**36.** No buildings will be erected within the area defined by the red dotted line annotated as ‘16m FRAP Line’ on the FRAPA drawings and no material will be stored, within the area defined by the red dotted line annotated as ‘16m FRAP Line’ on the FRAPA drawings, which could create a risk of damage to the integrity of the flood defence structure within this area.

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(a) 1991 c.29.

**37.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 35, must be constructed—

(a) without unreasonable delay in accordance with the plans approved 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.

(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 any specified work.

(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) and paragraph 41, 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 43.

**38.**—(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 limits of deviation and on land held 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) and paragraph 41, 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) is received by 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 necessary for such compliance and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain a necessary consent or comply with conditions imposed by the Agency in accordance with this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must upon receipt of the notice cease the specified works or part thereof until it has obtained the necessary 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 43.

(6) This paragraph does not apply to 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.

**39.** Subject to paragraph 41, 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.

**40.** If by reason of construction of the 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 three days of the undertaker becoming aware of such obstruction, unless otherwise agreed with the Agency.

**41.** The undertaker must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

- (a) in the examination or approval of plans under this Part of 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.

**42.—(1)** The undertaker is responsible for and must indemnify the Agency against all costs and losses not otherwise provided for in this Part of 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
- (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—

- (a) expenses and charges;
- (b) staff costs and overheads; and
- (c) legal costs;

“losses” includes physical damage.

(3) The undertaker must 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-paragraphs (1)(a) and (1)(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; and
- (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 notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker, such agreement not to 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.

**43.** Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 42(3) (arbitration) of this Order, but otherwise must be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

## PART 5

### FOR THE PROTECTION OF RAILWAY INTERESTS

**44.** The following 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 58, any other person on whom rights or obligations are conferred by that paragraph.

**45.** 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 Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 (licenses) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 0204587, 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 (meaning of “subsidiary” etc) of the Companies Act 2006(b)) 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;

“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;

“protective works” means any works specified by the engineer under paragraph 48(4);

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

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(a) 1993 c.43.  
 (b) 2006 c.46

“railway property” means any railway belonging to Network Rail 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 or connected with the purposes of such railway or works, apparatus or equipment; and

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

**46.—**(1) Where under this Part of 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 or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker 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 its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

**47.—**(1) The undertaker must not exercise the powers conferred by—

- (a) articles 3 (development consent granted by the Order), 4 (maintenance of authorised development), 13 (temporary prohibition or restriction of use of streets and public rights of way), 14 (permanent stopping up of streets), 15 (access to works), 17 (traffic regulation measures), 18 (discharge of water), 19 (authority to survey and investigate land), 20 (protective works to buildings), 21 (felling or lopping of trees), 22 (compulsory acquisition of land), 24 (compulsory acquisition of rights), 25 (acquisition of subsoil only), 26 (private rights), 27 (power to override easements and other rights), 30 (rights under or over streets), 31 (temporary use of land for carrying out the authorised development), 32 (temporary use of land for maintaining the authorised development), 33 (statutory undertakers), 34 (apparatus and rights of statutory undertakers in stopped up streets), 35 (recovery of costs of new connections); or
- (b) section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order,

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

(2) The undertaker 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 undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act or article 33 (statutory undertakers) of this Order 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 undertaker 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 under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

**48.—**(1) The undertaker 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 disapproval of those plans and the grounds of disapproval, the undertaker may serve upon the engineer written notice requiring the engineer to intimate the engineer's approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is to be 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 undertaker 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 undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker 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 undertaker.

(4) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion must 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 those railways (including any relocation, decommissioning 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 undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**49.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 48(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 48;
- (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 on it 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 or a protective work, the undertaker must, regardless of 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 undertaker 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 undertaker or its servants, contractors or agents.

**50.** The undertaker must—

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



**51.** Network Rail must at all times afford reasonable facilities to the undertaker 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 undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**52.—(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 a protective 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 undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker 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 or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective 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 undertaker decides that part of the specified work or protective work is to be constructed, Network Rail must assume construction of that part of the specified work or the protective work and the undertaker must, regardless of any such approval of a specified work or the protective work under paragraph 48(2) 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 or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 53(a) provide such details of the formula by which those sums have been calculated as the undertaker 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 undertaker to Network Rail under this paragraph.

**53.** The undertaker 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 undertaker as provided by paragraph 48(4) or in constructing any protective works under the provisions of paragraph 48(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 undertaker and the supervision by the engineer of the construction of a specified work or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers 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 or a protective work;
- (d) in respect of any special traffic works 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 a protective 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 or a protective work.

**54.—(1)** In this paragraph—

“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

“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 48 for the relevant part of the authorised development giving rise to EMI (unless the undertaker 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 undertaker 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 undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker 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 48) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified under to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified under 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 48(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker 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) cease to use (or procure the cessation of use of) the undertaker’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 undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail’s apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail’s apparatus under sub-paragraph (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 48.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 58 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 sub-paragraph (6) applies.

(10) For the purpose of paragraph 53(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 42(3) (procedures in relation to certain approvals etc.) to the Secretary of State is to be read as a reference to the Institution of Engineering and Technology.

**55.** If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or that protective work in such state of maintenance as not adversely to affect railway property.

**56.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective 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.

**57.** 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 or a protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**58.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

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

and the undertaker 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 a protective 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 undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision must 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 undertaker from any liability under the provisions of this sub-paragraph.

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

(3) The sums payable by the undertaker under sub-paragraph (1) must include sums 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 under 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 protective work or any such act or omission as mentioned in sub-paragraph (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.

**59.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 57) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

**60.** 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 undertaker under this Part of this Schedule or increasing the sums so payable.

**61.** The undertaker 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 undertaker of—

- (a) any railway property shown on the works plans and the 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.

**62.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I (the provision of railway services) of the Railways Act 1993.

**63.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 9 (consent to transfer benefit of the 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.

**64.** The undertaker must no later than 28 days from the date that the documents submitted to and certified by the Secretary of State in accordance with article 40 are certified by the Secretary of State, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

**65.** In relation to any dispute arising under this Part of this Schedule that is referred to arbitration in accordance with article 42(3) (arbitration), the process referred to in article 42(3) must be varied by the arbitrator where Network Rail demonstrates to the arbitrator's reasonable satisfaction that Network Rail is unable (acting reasonably) to comply with the process due to timing constraints that may arise for Network Rail in—

- (a) obtaining clearance conditions;
- (b) obtaining any engineering, regulatory or stakeholder (internal or external) consent; or
- (c) assessing any matter of concern with regard to the safe operation of Network Rail's railway,

the variation being to the extent reasonably necessary so that Network Rail is able (acting reasonably) to comply with that process.

## PART 6

### FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

**66.** For the protection of National Grid referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

#### **Interpretation**

**67.** In this Part of this Schedule—

“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 electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid 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 development” has the same meaning as in article 2 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 development and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of this Schedule only the term commence and commencement shall include any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“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 and/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;

“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 National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH and its successors and assignees;

“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;

“undertaker” has the same meaning as in article 2 of this Order; and

“specified works” means any of the works authorised by this Order or activities undertaken in association with the authorised development 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 72(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 72(2) or otherwise; and/or
- (c) include any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

### **On Street Apparatus**

**68.** Except for paragraphs 69 (apparatus of National Grid in stopped up streets), 74 (retained apparatus), 75 (expenses) and 76 (indemnity) 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 (street works in England and Wales) of the 1991 Act.

### **Apparatus of National Grid in stopped up streets**

**69.**—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 72.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary prohibition or restriction of use of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such street 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 street.

### **Protective works to buildings**

**70.**—(1) The undertaker, in the case of the powers conferred by article 20 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (not to be unreasonably withheld or delayed) and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

**71.**—(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 appropriate or acquire or take temporary possession of any land interest or 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 agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between the undertaker and National Grid) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects 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 must 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 part of the authorised development.

(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 Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 74 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) For the avoidance of doubt, 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 appropriate or acquire National Grid's freehold interest (or any other interest) in plots 16/03 and 16/04 otherwise than by agreement.

### **Removal of apparatus**

**72.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 71 or in any other authorised manner, the undertaker acquires any interest in 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) inclusive.

(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 no less than 56 days' 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, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 73(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 does 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 the prior 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**

**73.**—(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 and agreed with National Grid under sub-paragraph (1) 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 in the matter will be referred to arbitration in accordance with paragraph 80 (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. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 42(3) (arbitration) of the Order must apply.

### **Retained apparatus**

**74.**—(1) Not less than 56 days before the commencement of any specified works, the removal of which has not been required by the undertaker under paragraph (72(2)) or otherwise and to which sub-paragraphs (2)(a) or (2)(b) applies 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 its electricity tower foundations.



(2) In relation to works which will or may be situated on, over, under or within—

- (a) 15 metres measured in any direction of any apparatus; or
- (b) 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 ten 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 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 the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (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 (2) or (3)—

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

(6) In relation to any work to which sub-paragraph (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 or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only 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-paragraph (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 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 part of the authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (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 66 to 68 and 71 to 73 apply as if the removal of the apparatus had been required by the undertaker under paragraph 72(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—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with paragraph 77 at all times.

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

## **Expenses**

**75.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or 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 part of the authorised development as referred to in this Part of this Schedule 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;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 72(3); and/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;
- (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 article 42 (procedures in relation to certain approvals etc.) 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) must be reduced by the amount of that excess save where 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) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six 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.

## **Indemnity**

**76.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any part 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, 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 the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision does not (unless sub-paragraph (3) applies),

excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and National Grid (in writing).

- (3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
  - (b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of a person with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 or article 9 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any part of the authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

77. 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**

78.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 72(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 74, 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 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 where 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 National Grid, it must not be unreasonably withheld or delayed.

### **Access**

79. If in consequence of the agreement reached in accordance with paragraph 71(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**

80. Save for differences or disputes arising under paragraphs 72(2), 72(4), 73(1) and 74 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 (procedures in relation to certain approvals etc.).

## Notices

**81.** The plans submitted to National Grid by the undertaker pursuant to paragraph 74(1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto: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.

## PART 7

### FOR THE PROTECTION OF UK POWER NETWORKS LIMITED, LONDON POWER NETWORKS PLC AND SOUTH EAST POWER NETWORKS PLC

**82.** 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 undertakers concerned.

**83.** In this Part of this Schedule—

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by that utility undertaker;

“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

“utility undertaker” means—

- (a) UK Power Networks Limited, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;
- (b) London Power Networks plc, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;
- (c) South Eastern Power Networks plc, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;

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.

**84.** 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.

**85.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary prohibition on restriction of use of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**86.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than with the prior written agreement of the utility undertaker.

**87.—(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 over which access to any apparatus is enjoyed 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 and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(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 and section 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 reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(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(3) (procedures in relation to certain approvals etc.).

(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(3), 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 it desires itself to execute any work, or part of any work, in connection with the removal of apparatus or construction of alternative apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay and only in accordance with plans approved by the utility undertaker, such approval may be subject to such reasonable conditions including but not limited to the undertaker entering into an assets protection agreement with the utility undertaker as the utility undertaker deems necessary. The undertaker must carry out the works under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker subject to the utility undertaker's reasonable specification.

**88.**—(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 must 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(3).

(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.

**89.**—(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 87, the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description 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) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are 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 82 to 88 apply as if the removal of the apparatus had been required by the undertaker under paragraph 87(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, 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.

(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, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**90.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses 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 87(2).

(2) There is to 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, 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,

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(3) 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 the utility undertaker in question by virtue of sub-paragraph (1) is to 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 87(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(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 seven years and six 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.

**91.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 87(2), 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 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) Nothing in sub-paragraph 87(2) 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.

(3) 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**92.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 87(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 89, the undertaker must use reasonable 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 reasonable endeavours to co-operate with the undertaker for that purpose.

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

## PART 8

### FOR THE PROTECTION OF THAMES WATER UTILITIES LIMITED

#### Application

**94.** The provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and Thames Water, have effect.



## Interpretation

**95.** In this Part of this Schedule—

“Thames Water” means Thames Water Utilities Limited, company number 02366661, whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire, RG1 8DB and any successor in statutory function;

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Thames Water for the purposes of water supply and sewerage, including sewerage pumping stations, together with—

- (a) any drain or works vested in Thames Water under the Water Industry Act 1991; and
- (b) 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 the Water Industry Act 1991 or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) 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 or drain (within the meaning in section 219 (general interpretation) of the Water Industry Act 1991) or works, 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 Thames Water to fulfil its statutory functions in no less efficient a manner than previously;

“authorised development” means the development as described in Schedule 1 (authorised development) of this Order;

“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 sections, drawings, specifications and method statements; and

“the standard protection strips” means the strips of land falling within the following distances to either side of the medial line of any relevant apparatus—

- (a) 2.25 metres where the diameter of the apparatus is less than 150 millimetres;
- (b) 3 metres where the diameter of the apparatus is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the apparatus is between 451 and 750 millimetres; and
- (d) 6 metres where the diameter of the apparatus exceeds 750 millimetres; and

“this Order” means the Riverside Energy Park Order 2020 as defined in article 1 of this Order

“the relevant planning authority” means the authority as defined in article 2 of this Order

“the WIA 1991” means the Water Industry Act 1991

## Apparatus

**96.**—(1) The undertaker must not within the standard protection strips—

- (a) interfere with any apparatus or construct any part of the authorised development; or
- (b) execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus; or
- (c) execute any filling around any apparatus (where the apparatus is laid in a trench) within the standard protection strips

unless otherwise agreed in writing with Thames Water, such agreement not to be unreasonably withheld or delayed and, in any event, shall be deemed to be given if not otherwise stated within 28 days.

(2) The undertaker must bring the requirements in sub-paragraph (1) to the attention of any agent or contractor responsible for carrying out any of the authorised development on behalf of the undertaker.

**97.** The alteration, extension, removal or relocation of any apparatus must not be implemented until—

- (a) any requirement for any permits under 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 Thames Water on alternative outfall locations as a result of such re-location are approved, such approvals from Thames Water not to be unreasonably withheld or delayed and, in any event, shall be deemed to be given if not otherwise stated within 28 days; and
- (b) the undertaker has made the appropriate applications required under the Water Industry Act 1991 and the undertaker has supplied to Thames Water a plan and section of the works proposed and Thames Water has given the necessary consents and approvals, such consent and approval not to be unreasonably withheld or delayed and, in any event shall be deemed to be given if not otherwise stated within 28 days, and such works must be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Thames Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**98.** In the situation where in exercise of the powers under this Order the undertaker acquires any interest in any land in which apparatus is located and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension can take place until Thames 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.

**99.** 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 Thames Water to use, keep, inspect, renew and maintain its apparatus within the Order limits, the undertaker must, with the agreement of Thames Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Thames Water, such agreement not to be unreasonably withheld or delayed and, in any event, shall be deemed to be given within 28 days, and to be subject to arbitration under article 42(3) (procedures in relation to certain approvals etc.).

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

**101.** If in consequence of the exercise of the powers under this Order, previously unmapped sewers, lateral drains or other apparatus belonging to or maintained by, or suspected to belong to or maintained by, Thames Water, are identified by the undertaker, notification of the location of such assets will as soon as reasonably practicable be given to Thames Water and afforded the same protection as other Thames Water apparatus.

**102.** If for any reason or in consequence of the construction of any of the works referred to in paragraphs 97 to 99 and 101 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 Thames Water, or there is any interruption in any service provided by Thames Water, the undertaker must—

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

## **Consultation**

**103.** Upon submission of any plan, scheme or strategy under Requirements 5 (Biodiversity and landscape mitigation strategy), 11 (Code of construction practice), 13, (Construction traffic

management plan(s)), 18 (Operational lighting strategy) and 19 (Control of operational noise) of the Order to the relevant planning authority, the undertaker shall submit the same at the same time to Thames Water care of Linda Rushton at Clearwater Court, Vastern Road, Reading RG1 8DB and Michael Swain at Bazalgette Way, Abbey Wood, London SE2 9AQ.

## PART 9

### FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER

#### Application

**104.** For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

#### Interpretation

**105.** In this Part of this Schedule—

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN 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 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” has the same meaning as in article 2 and commencement is to be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include the pre-commencement works;

“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 and/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 SGN (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 and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for SGN’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 SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“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;

“parent company” means a parent company of the undertaker acceptable to SGN and which shall have been approved by SGN acting reasonably;

“rights” includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and/or any successor as a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986.

“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 sub-paragraph 110(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 sub-paragraph 110(2) or otherwise;

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

### **On Street Apparatus**

**106.**—(1) Except for paragraphs 107 (apparatus of SGN in stopped up streets), 110 (removal of apparatus) in so far as sub-paragraph 107(2) applies, 111 (facilities and rights for alternative apparatus) in so far as sub-paragraph 107(2) below applies, 112 (retained apparatus: protection of SGN), 113 (expenses) and 114 (indemnity) of this part 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 SGN, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) Paragraph 110 and 111 of this Agreement shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

### **Apparatus of SGN in stopped up streets**

**107.**—(1) Without prejudice to the generality of any other protection afforded to SGN elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of streets) if SGN has any apparatus in the street or accessed via that street SGN will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to SGN, or will procure the granting to SGN of, legal easements reasonably satisfactory to SGN in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph affects any right of the undertaker or of SGN to require the removal of that apparatus under paragraph 110.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary prohibition or restriction of use of streets and public rights of way), SGN will be at liberty at all times to take all necessary access across any such stopped up highway and/or 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.

### **Protective works to buildings**

**108.**—(1) The undertaker, in the case of the powers conferred by article 20 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SGN or any interruption in the supply of gas by SGN, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to SGN for any loss sustained by it; and
- (b) indemnify SGN against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SGN, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SGN or its contractors or workmen; and SGN will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by SGN, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

**109.**—(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 appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of SGN otherwise than by agreement.

(2) The undertaker and SGN 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 SGN and/or other enactments relied upon by SGN as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(3) Any agreement or consent granted by SGN under paragraph 112 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph 109(1).

(4) As a condition of an agreement between the parties in sub-paragraph (1) that involves decommissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of SGN in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release SGN from all liabilities in respect of such decommissioned apparatus from the date of such surrender.

(5) Where an undertaker acquires land which is subject to any SGN right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 110 do not apply, the undertaker must:

- (a) retain any notice of SGN's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of SGN's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of SGN's easement, right or other interest in relation to such acquired land; and
- (c) provide up to date official entry copies to SGN within 20 working days of receipt of such up to date official entry copies.

## **Removal of apparatus**

**110.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 104 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation to the reasonable satisfaction of SGN and in accordance with sub-paragraph (2) to (5) inclusive.

(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 SGN advance written notice of that requirement, together with a plan and section 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 SGN reasonably needs to move or remove any of its apparatus) the undertaker must afford to SGN to its satisfaction (taking into account sub-paragraph 111(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus).

(3) If 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, SGN may, 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 does not extend to the requirement for SGN to use its compulsory purchase powers to this end unless it (in its absolute discretion) 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 SGN and the undertaker.

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SGN of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SGN to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

## **Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph (1) above 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 SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter are

referred to arbitration in accordance with paragraph 118 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of SGN**

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

(2) In relation to works which will or may be situated on, over, under or within (a) ten metres measured in any direction of any apparatus, or (b) involve embankment works within ten metres of any apparatus, the plan to be submitted where reasonably required to SGN 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 SGN has given written approval of the plan so submitted.

(4) Any approval of SGN 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, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and SGN and in accordance with all conditions imposed under sub-paragraph (4)(a), and SGN will be entitled to watch and inspect the execution of those works.

(7) Where SGN 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 SGN's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and SGN must give 45 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If SGN, 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 104 to 106 and 109 to 111 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 110(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 authorised 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 is not 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 SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) As soon as reasonably practicable after any ground subsidence event which is known to or may have affected apparatus attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that SGN 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 113.

## **Expenses**

**113.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN on demand all charges, costs and expenses reasonably anticipated or incurred by SGN in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by SGN as a consequence of SGN -
  - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 110(3) if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (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;
- (g) any watching brief pursuant to sub-paragraph 112(6).

(2) There is to 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 article 42(3) (procedures in relation to certain approvals etc.) 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 SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) 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 is not to 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.

### **Indemnity**

**114.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, 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 the authorised works) or property of SGN, or there is any interruption in any service provided, or in the supply of any goods, by SGN, or SGN becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and
- (b) indemnify SGN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from SGN, by reason or in consequence of any such damage or interruption or SGN becoming liable to any third party as aforesaid other than arising from any default of SGN.

(2) The fact that any act or thing may have been done by SGN on behalf of the undertaker or in accordance with a plan approved by SGN or in accordance with any requirement of SGN or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless SGN fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and SGN.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of SGN, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by SGN as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 or article 9 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 114.

(4) SGN must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory

compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) SGN must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 114 applies. If requested to do so by the undertaker, SGN must provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 114 for claims reasonably incurred by SGN.

### **Enactments and agreements**

**115.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN 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 SGN 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**

**116.—**(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under sub-paragraph 110(2) or SGN makes requirements for the protection or alteration of apparatus under paragraph 112, 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 SGN's undertaking and SGN must use its best endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

**117.** If in consequence of the agreement reached in accordance with sub-paragraph 109(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**118.** Save for differences or disputes arising under sub-paragraphs 110(2), 110(4) and 111(1) and paragraph 109 any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

### **Notices**

**119.** The plans submitted to SGN by the undertaker pursuant to sub-paragraph 112(1) must be sent to SGN at 1 Forbury Place, 43 Forbury Road, Reading, Berkshire RG1 3JH or such other address as SGN may from time to time appoint instead for that purpose and notify to the undertaker.

SCHEDULE 11

Article 40

DOCUMENTS AND PLANS TO BE CERTIFIED

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access and public rights of way plans	2.3 (key plan and sheets 1 to 16)	Rev. 1	May 2019
book of reference	4.3	Rev. 3	September 2019
CHP statement	5.4	Rev. 0	November 2018
	5.4.1 (CHP supplementary report)	Rev. 0	May 2019
design principles	7.4	Rev. 0	November 2018
environmental statement	environmental statement 6.1 (excluding chapters 3, 5, 6, 7, 9, 11, 12, 13, 14 and 18)	Rev. 0	November 2018
	environmental statement 6.1 (chapters 3, 5, 6, 7, 9, 11, 12, 13, 14 and 18)	Rev. 1	May 2019
	environmental statement 6.2 (excluding Figure 7.5, 7.8, 7.9 and 7.10)	Rev. 0	November 2018
	environmental statement 6.2 (Figure 7.5)	Rev. 2	June 2019
	environmental statement 6.2 (Figure 7.8)	Rev. 2	September 2019
	environmental statement 6.2 (Figure 7.9)	Rev. 2	September 2019
	environmental statement (Figure 7.10)	Rev. 2	September 2019
	environmental statement 6.3 (excluding appendix J (network traffic flows and distribution) to appendix B.1, appendix L (outline construction traffic management plan) to appendix B1, appendix C.1 (traffic modelling), C.2 (stack modelling), appendix C.3 (human health	Rev. 0	November 2018

	risk assessment)		
	environmental statement 6.3 (appendix J (network traffic flows and distribution) to appendix B.1, appendix C.1 (traffic modelling), C.2 (stack modelling), appendix C.3 (human health risk assessment))	Rev. 1	May 2019
	environmental statement 6.3 (appendix L (outline construction traffic management plan) to appendix B.1	Rev. 6	September 2019
	environmental statement 6.4	Rev. 0	November 2018
	environmental statement 6.5	Rev. 1	May 2019
	environmental statement supplemental report 6.6	Rev. 0	May 2019
flood risk assessment	5.2	Rev. 0	November 2018
FRAPA drawings	appendix B of 8.01.03	Rev. 0	13 May 2019
land plans	2.1	Rev. 2	July 2019
MOL plan	8.02.58	Rev. 0	9 August 2019
outline biodiversity and landscape mitigation strategy	7.6	Rev. 4	September 2019
outline code of construction practice	7.5	Rev. 5	September 2019
outline lighting strategy	appendix K.3 of 6.3	Rev. 0	November 2018
pre-commencement plan	8.02.55	Rev. 0	August 2019
REP and RRRF Application Boundaries Plan	8.02.56	Rev. 1	September 2019
transport assessment	appendix B.1 of 6.3 (excluding appendix J and appendix L)	Rev. 0	November 2018
	appendix J to appendix B.1 of 6.3	Rev. 1	May 2019
	appendix L to appendix B.1 of 6.3	Rev. 6	September 2019
	jetty outage review	Rev. 0	June 2019
	supplementary note to the temporary jetty outage review	Rev. 0	September 2019
works plans	2.2	Rev. 1	May 2019

## PROCEDURE IN RELATION TO CERTAIN APPROVALS ETC.

**Interpretation****1.** In this Schedule—

“the appeal parties” means the relevant authority, the undertaker and any requirement consultees;

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

“relevant authority” means the relevant planning authority, relevant highway authority, relevant traffic authority, relevant street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought; and

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

**Applications made under requirements**

**2.**—(1) Subject to article 42(2) (procedures in relation to certain approvals etc), where an application has been made to the relevant authority for any consent, agreement or approval required or contemplated by any provisions of this Order (including consent, agreement or approval in respect of part of a requirement) the relevant authority must give notice to the undertaker of its decision on the application within a period of nine weeks beginning with—

- (a) the day immediately following that on which the application is received by the relevant authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under sub-paragraph (2); or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant authority.

(2) Subject to sub-paragraph (4), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where an application is made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, it must be accompanied by a report which states whether the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement.

(4) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new

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or materially different environmental effects compared to those in the environmental statement,

the application is to be taken to have been refused by the relevant authority at the end of that period.

### **Further information and consultation**

**3.—**(1) In relation to any application to which this Schedule applies, the relevant authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant authority considers such further information to be necessary and the provision of the Order governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision of the Order governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within ten business days of receipt of the application.

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

### **Appeals**

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

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(3)) an application for any consent, agreement or approval required or contemplated by any of the provisions of this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where paragraph 2(3) applies) expiry of the decision period as determined under paragraph 2(1);
- (b) 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 appeal parties;
- (c) as soon as is practicable following receipt of the appeal documentation, the Secretary of State is to appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention must be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (d) the relevant authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within ten business 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;

- (e) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d); and
- (f) the appointed person must decide the appeal and notify the appeal parties of the decision, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e).

(3) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required, the appeal part from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) is to be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by 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 business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(d) to (2)(f).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(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 prescribed time limits, or set by the appointed person, under this paragraph.

(8) The appointed person may proceed to a decision even though no written representations have been made within the prescribed time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is to be final and binding on the appeal 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 Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the Order or for the purpose of Schedule 2 as if it had been given by the relevant authority. The relevant 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) The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten years’ experience.

(12) Save where a direction is given pursuant to sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) On application by the relevant 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), published by the Ministry of Housing, Communities & Local Government, or any circular or guidance which may from time to time replace it.

**Application to protective provisions**

**5.** Nothing in this Schedule applies to any consent, agreement or approval required or contemplated by Schedule 10 or article 20(6) (protective work to buildings).



## SCHEDULE 13

Article 6

### MODIFICATIONS TO THE SECTION 36 CONSENT AND RRRF PLANNING PERMISSION

#### PART 1

##### SECTION 36 CONSENT

1. Delete the words “associated open storage areas for ash container storage,” in paragraph 2(f).
2. Delete “and” at the end of paragraph 3(1)(i).
3. For the words “25 September 2014.” at the end of paragraph 3(1)(ii) substitute “25 September 2014; and”.
4. After paragraph 3(1)(ii) insert new paragraph 3(1)(iii) as follows, “(iii) the Riverside Energy Park Order 2020”.

#### PART 2

##### RRRF PLANNING PERMISSION

5. After RRRF condition 1(iii), insert new condition 1(iv) as follows, “(iv) the Riverside Energy Park Order 2020”.
6. In RRRF condition 7, insert the words “(except for the development authorised by the Riverside Energy Park Order 2020)” after “and for no other purpose”.
7. For RRRF condition 23, substitute new condition 23 as follows “23. Bottom ash shall only be stored in the bunkers to the development hereby approved”.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Cory Environmental Holdings Limited pursuant to the provisions of this Order (referred to in this Order as the undertaker) to construct, operate and maintain a generating station with a capacity of over 50 megawatts but below 300 megawatts.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 40 of this Order (certification of plans etc.) may be inspected free of charge on the website of the Planning Inspectorate or during working hours at London Borough of Bexley, Civic Offices, 2 Watling Street, Bexleyheath, Kent DA6 7AT.

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