

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

PART 1

AUTHORISED DEVELOPMENT

1. In the Districts of Swale and Canterbury in the County of Kent a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises up to two generating stations with a combined gross electrical output capacity of over 50 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

Work No.1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts comprising—

- (a) solar modules;
- (b) inverters;
- (c) transformers; and
- (d) a network of cable circuits.

Work No.2— works comprising either—

- (a) an energy storage facility with a gross storage capacity of over 50 megawatts comprising—
 - (i) energy storage;
 - (ii) transformers;
 - (iii) switch gear and ancillary equipment;
 - (iv) a network of cable circuits;
 - (v) cables connecting to Work Nos. 1 and 3; and
 - (vi) a flood protection bund; or
- (b) an extension of the ground mounted solar photovoltaic generating station in Work No.1 and comprising—
 - (i) solar modules;
 - (ii) inverters;
 - (iii) transformers;
 - (iv) electrical underground cables connecting to Work Nos. 1 and 3;
 - (v) a network of cable circuits; and
 - (vi) a flood protection bund,

and associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No.3— a substation with works comprising—

- (a) a network of cable circuits;
- (b) electrical underground cables connecting to Work Nos 1 and 2, and the existing substation;
- (c) construction compounds; and
- (d) a flood protection bund.

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Work No.4— works comprising—

- (a) a network of cable circuits;
- (b) construction compounds;
- (c) landscaping;
- (d) earthworks;
- (e) drainage; and
- (f) undergrounding of existing overhead line.

Work No.5— works to lay cable systems connecting Work No. 3 and the existing substation and works to create and maintain means of access connecting to the existing access road in Work No. 7;

Work No.6— works to create and maintain a means of access connecting Work Nos 1, 2 and 3 with the existing access road in Work No. 7;

Work No.7— works to alter and maintain the existing access road;

Work No.8— works to create and maintain a habitat management area, comprising—

- (a) earth works;
- (b) means of access; and
- (c) drainage;

Work No.9— works to maintain the existing flood defence, comprising—

- (a) inspection;
- (b) investigation (above MHWS, inclusive of trial pitting);
- (c) replacement of expansion joint material;
- (d) concrete repair (to a standard specified in BS EN 1504);
- (e) replacement of concrete toe beam;
- (f) vegetation management (including grass cutting and removal of larger vegetation);
- (g) replacement of loose and missing block work;
- (h) repair of voids;
- (i) fencing repair and replacement;
- (j) servicing outfalls;
- (k) cleaning outfall ancillary structures;
- (l) topping up of embankment crest levels at localised low spots;
- (m) vermin control;
- (n) repairs of rutting in crest;
- (o) repointing of jointed structures;
- (p) replacing modular blocks;
- (q) replacement of toe armour as required;
- (r) reinstatement of timber toe piles;
- (s) timber groyne plank replacement;
- (t) replacement of bolts on groyne;
- (u) placement of timber rubbing boards on groyne;
- (v) localised movements of beach material;
- (w) cleaning/dredging of drainage ditch channels;

- (x) replacement of pitching where present;
- (y) replacement of access structures;
- (z) painting; and
- (aa) any other activities required to be undertaken which—
 - (i) use the same materials as those on the existing flood defence;
 - (ii) do not alter the plan form or cross section of the existing flood defence;
 - (iii) do not provide an overall increase or reduction in flood level; and
 - (iv) do not require excavations of beach material deeper than 1.5 metres.

In connection with such Work Nos. 1 to 9 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) works for the provision of fencing and security measures such as CCTV and lighting;
- (b) laying down of internal access tracks;
- (c) ramps, means of access and footpaths;
- (d) bunds, embankments, and swales;
- (e) boundary treatments, including means of enclosure;
- (f) laying out and surfacing of permissive paths, including the laying and construction of drainage infrastructure, signage and information boards;
- (g) habitat creation and management, including earthworks, landscaping, means of enclosure, and the laying and construction of drainage infrastructure;
- (h) jointing bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying;
- (i) works for the provision of apparatus including cabling, water supply works, foul drainage provision, surface water management systems and culverting;
- (j) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (k) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (l) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (m) works for the benefit or protection of land affected by the authorised development; and
- (n) working sites in connection with the construction of the authorised development, construction lay down areas and compounds, storage compounds and their restoration.

2. The grid coordinates for that part of the authorised development which is seaward of MHWS are specified below—

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 19' 56.946" N	0° 54' 46.089" E	100	51° 20' 32.408" N	0° 54' 7.763" E
2	51° 19' 58.535" N	0° 54' 45.298" E	101	51° 20' 33.143" N	0° 54' 9.545" E
3	51° 19' 58.708" N	0° 54' 45.201" E	102	51° 20' 34.285" N	0° 54' 13.532" E
4	51° 19' 59.027" N	0° 54' 45.080" E	103	51° 20' 35.087" N	0° 54' 17.689" E

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<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
5	51° 19' 59.384" N	0° 54' 44.724" E	104	51° 20' 35.317" N	0° 54' 21.662" E
6	51° 19' 59.960" N	0° 54' 44.350" E	105	51° 20' 37.215" N	0° 54' 36.902" E
7	51° 20' 1.300" N	0° 54' 43.858" E	106	51° 20' 37.791" N	0° 54' 38.342" E
8	51° 20' 2.911" N	0° 54' 42.665" E	107	51° 20' 37.114" N	0° 54' 46.675" E
9	51° 20' 3.116" N	0° 54' 42.384" E	108	51° 20' 37.181" N	0° 54' 46.705" E
10	51° 20' 4.788" N	0° 54' 40.819" E	109	51° 20' 37.035" N	0° 54' 49.041" E
11	51° 20' 4.959" N	0° 54' 40.563" E	110	51° 20' 36.955" N	0° 54' 49.652" E
12	51° 20' 5.438" N	0° 54' 40.227" E	111	51° 20' 36.954" N	0° 54' 49.874" E
13	51° 20' 6.231" N	0° 54' 38.746" E	112	51° 20' 36.983" N	0° 54' 50.130" E
14	51° 20' 6.637" N	0° 54' 38.090" E	113	51° 20' 36.985" N	0° 54' 50.419" E
15	51° 20' 7.311" N	0° 54' 36.551" E	114	51° 20' 36.920" N	0° 54' 50.652" E
16	51° 20' 7.817" N	0° 54' 35.012" E	115	51° 20' 37.006" N	0° 54' 51.158" E
17	51° 20' 8.559" N	0° 54' 30.512" E	116	51° 20' 37.215" N	0° 54' 50.375" E
18	51° 20' 8.713" N	0° 54' 28.690" E	117	51° 20' 37.673" N	0° 54' 46.063" E
19	51° 20' 8.886" N	0° 54' 27.093" E	118	51° 20' 38.109" N	0° 54' 39.463" E
20	51° 20' 8.229" N	0° 54' 29.798" E	119	51° 20' 36.284" N	0° 54' 26.251" E
21	51° 20' 7.773" N	0° 54' 32.964" E	120	51° 20' 35.445" N	0° 54' 16.667" E
22	51° 20' 6.916" N	0° 54' 36.190" E	121	51° 20' 34.876" N	0° 54' 13.691" E
23	51° 20' 5.271" N	0° 54' 39.948" E	122	51° 20' 33.400" N	0° 54' 8.742" E
24	51° 20' 1.514" N	0° 54' 43.309" E	123	51° 20' 32.885" N	0° 54' 7.478" E
25	51° 19' 59.852" N	0° 54' 43.782" E	124	51° 20' 32.714" N	0° 54' 5.934" E
26	51° 20' 11.941" N	0° 54' 13.217" E	125	51° 20' 32.081" N	0° 54' 3.003" E
27	51° 20' 11.877" N	0° 54' 12.095" E	126	51° 20' 36.869" N	0° 54' 51.672" E
28	51° 20' 11.663" N	0° 54' 10.398" E	127	51° 20' 36.819" N	0° 54' 51.640" E
29	51° 20' 11.436" N	0° 54' 9.385" E	128	51° 20' 36.762" N	0° 54' 51.642" E
30	51° 20' 10.399" N	0° 54' 6.406" E	129	51° 20' 36.711" N	0° 54' 51.724" E
31	51° 20' 10.522" N	0° 54' 7.338" E	130	51° 20' 36.674" N	0° 54' 51.969" E
32	51° 20' 10.085" N	0° 53' 46.895" E	131	51° 20' 36.662" N	0° 54' 52.243" E
33	51° 20' 10.324" N	0° 53' 47.052" E	132	51° 20' 36.643" N	0° 54' 52.308" E
34	51° 20' 10.497" N	0° 53' 47.265" E	133	51° 20' 36.557" N	0° 54' 52.486" E
35	51° 20' 10.555" N	0° 53' 47.377" E	134	51° 20' 36.597" N	0° 54' 52.469" E
36	51° 20' 10.609" N	0° 53' 47.678" E	135	51° 20' 36.651" N	0° 54' 52.486" E
37	51° 20' 10.685" N	0° 53' 56.589" E	136	51° 20' 42.418" N	0° 55' 36.744" E

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
38	51° 20' 10.577" N	0° 53' 57.633" E	137	51° 20' 42.431" N	0° 55' 37.288" E
39	51° 20' 10.677" N	0° 53' 57.274" E	138	51° 20' 42.700" N	0° 55' 40.210" E
40	51° 20' 10.741" N	0° 53' 56.919" E	139	51° 20' 42.775" N	0° 55' 40.607" E
41	51° 20' 10.759" N	0° 53' 56.703" E	140	51° 20' 42.916" N	0° 55' 40.911" E
42	51° 20' 10.691" N	0° 53' 47.644" E	141	51° 20' 42.913" N	0° 55' 41.691" E
43	51° 20' 10.658" N	0° 53' 47.286" E	142	51° 20' 43.090" N	0° 55' 42.369" E
44	51° 20' 10.631" N	0° 53' 47.191" E	143	51° 20' 43.208" N	0° 55' 42.254" E
45	51° 20' 10.417" N	0° 53' 46.970" E	144	51° 20' 43.241" N	0° 55' 43.046" E
46	51° 20' 10.380" N	0° 53' 46.880" E	145	51° 20' 43.362" N	0° 55' 43.772" E
47	51° 20' 10.348" N	0° 53' 46.718" E	146	51° 20' 43.555" N	0° 55' 43.598" E
48	51° 20' 10.380" N	0° 53' 46.503" E	147	51° 20' 43.523" N	0° 55' 44.092" E
49	51° 20' 10.447" N	0° 53' 46.302" E	148	51° 20' 43.570" N	0° 55' 44.669" E
50	51° 20' 27.907" N	0° 53' 46.744" E	149	51° 20' 43.671" N	0° 55' 45.270" E
51	51° 20' 27.862" N	0° 53' 47.043" E	150	51° 20' 43.799" N	0° 55' 45.070" E
52	51° 20' 27.876" N	0° 53' 47.230" E	151	51° 20' 43.780" N	0° 55' 45.567" E
53	51° 20' 27.830" N	0° 53' 47.672" E	152	51° 20' 43.948" N	0° 55' 46.756" E
54	51° 20' 27.699" N	0° 53' 48.253" E	153	51° 20' 44.306" N	0° 55' 48.368" E
55	51° 20' 27.585" N	0° 53' 48.411" E	154	51° 20' 44.687" N	0° 55' 49.791" E
56	51° 20' 27.555" N	0° 53' 48.435" E	155	51° 20' 45.757" N	0° 55' 54.594" E
57	51° 20' 27.538" N	0° 53' 48.625" E	156	51° 20' 47.241" N	0° 56' 2.207" E
58	51° 20' 27.517" N	0° 53' 48.660" E	157	51° 20' 47.983" N	0° 56' 6.651" E
59	51° 20' 27.406" N	0° 53' 48.710" E	158	51° 20' 48.152" N	0° 56' 6.491" E
60	51° 20' 27.376" N	0° 53' 48.744" E	159	51° 20' 48.092" N	0° 56' 6.958" E
61	51° 20' 27.358" N	0° 53' 48.805" E	160	51° 20' 48.096" N	0° 56' 7.304" E
62	51° 20' 27.357" N	0° 53' 48.852" E	161	51° 20' 48.226" N	0° 56' 7.918" E
63	51° 20' 27.320" N	0° 53' 49.159" E	162	51° 20' 48.436" N	0° 56' 7.698" E
64	51° 20' 27.275" N	0° 53' 49.275" E	163	51° 20' 48.394" N	0° 56' 8.208" E
65	51° 20' 27.252" N	0° 53' 49.310" E	164	51° 20' 48.416" N	0° 56' 8.607" E
66	51° 20' 27.112" N	0° 53' 49.343" E	165	51° 20' 48.474" N	0° 56' 8.816" E
67	51° 20' 27.084" N	0° 53' 49.434" E	166	51° 20' 48.520" N	0° 56' 8.981" E
68	51° 20' 27.059" N	0° 53' 49.665" E	167	51° 20' 48.530" N	0° 56' 9.101" E
69	51° 20' 27.036" N	0° 53' 49.798" E	168	51° 20' 48.516" N	0° 56' 9.227" E
70	51° 20' 26.925" N	0° 53' 50.097" E	169	51° 20' 48.514" N	0° 56' 9.358" E

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71	51° 20' 26.949" N	0° 53' 50.133" E	170	51° 20' 48.592" N	0° 56' 9.802" E
72	51° 20' 27.049" N	0° 53' 49.908" E	171	51° 20' 48.676" N	0° 56' 10.128" E
73	51° 20' 27.113" N	0° 53' 49.705" E	172	51° 20' 48.616" N	0° 56' 7.869" E
74	51° 20' 27.164" N	0° 53' 49.465" E	173	51° 20' 48.857" N	0° 56' 14.026" E
75	51° 20' 27.246" N	0° 53' 49.429" E	174	51° 20' 48.852" N	0° 56' 14.100" E
76	51° 20' 27.272" N	0° 53' 49.410" E	175	51° 20' 48.844" N	0° 56' 14.168" E
77	51° 20' 27.326" N	0° 53' 49.330" E	176	51° 20' 48.807" N	0° 56' 14.326" E
78	51° 20' 27.347" N	0° 53' 49.270" E	177	51° 20' 48.722" N	0° 56' 14.640" E
79	51° 20' 27.374" N	0° 53' 49.080" E	178	51° 20' 48.645" N	0° 56' 15.364" E
80	51° 20' 27.403" N	0° 53' 48.953" E	179	51° 20' 48.916" N	0° 56' 17.077" E
81	51° 20' 27.459" N	0° 53' 48.796" E	180	51° 20' 44.526" N	0° 56' 52.481" E
82	51° 20' 27.534" N	0° 53' 48.775" E	181	51° 20' 44.523" N	0° 56' 53.111" E
83	51° 20' 27.577" N	0° 53' 48.731" E	182	51° 20' 44.613" N	0° 56' 53.520" E
84	51° 20' 27.605" N	0° 53' 48.666" E	183	51° 20' 44.607" N	0° 56' 53.654" E
85	51° 20' 27.622" N	0° 53' 48.491" E	184	51° 20' 44.472" N	0° 56' 54.152" E
86	51° 20' 27.695" N	0° 53' 48.408" E	185	51° 20' 44.365" N	0° 56' 54.631" E
87	51° 20' 27.763" N	0° 53' 48.293" E	186	51° 20' 44.337" N	0° 56' 54.961" E
88	51° 20' 27.942" N	0° 53' 47.338" E	187	51° 20' 44.341" N	0° 56' 55.338" E
89	51° 20' 27.948" N	0° 53' 47.235" E	188	51° 20' 44.188" N	0° 56' 56.399" E
90	51° 20' 27.910" N	0° 53' 47.165" E	189	51° 20' 44.193" N	0° 56' 56.709" E
91	51° 20' 27.920" N	0° 53' 47.052" E	190	51° 20' 44.268" N	0° 56' 57.174" E
92	51° 20' 27.939" N	0° 53' 46.941" E	191	51° 20' 49.033" N	0° 56' 20.247" E
93	51° 20' 27.963" N	0° 53' 46.853" E	192	51° 20' 48.835" N	0° 56' 14.262" E
94	51° 20' 27.997" N	0° 53' 46.798" E	193	51° 20' 48.854" N	0° 56' 14.137" E
95	51° 20' 30.414" N	0° 53' 56.932" E	194	51° 20' 48.859" N	0° 56' 14.060" E
96	51° 20' 30.486" N	0° 53' 58.149" E	195	51° 20' 47.432" N	0° 56' 30.037" E
97	51° 20' 30.389" N	0° 53' 58.557" E	196	51° 20' 47.356" N	0° 56' 30.457" E
98	51° 20' 31.727" N	0° 54' 3.734" E	197	51° 20' 46.743" N	0° 56' 35.249" E
99	51° 20' 32.193" N	0° 54' 5.976" E	198	51° 20' 46.536" N	0° 56' 37.296" E

PART 2

REQUIREMENTS

Time limits

1. The authorised development must commence no later than the expiration of five years beginning with the date this Order comes into force.

Detailed design approval

2.—(1) No phase of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas;
- (g) refuse or other storage units, signs and lighting;
- (h) drainage, water, power and communications cables and pipelines;
- (i) programme for landscaping works; and
- (j) fencing,

relating to that phase have been submitted to and approved in writing by the relevant planning authority.

(2) The details submitted must accord with—

- (a) the location, order limits and grid coordinates plan;
- (b) the works plan;
- (c) the principles and assessments set out in the environmental statement; and
- (d) the outline design principles, or such variation thereof as may be approved by the relevant planning authority pursuant to requirement .

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

Battery safety management

3.—(1) Work No. 2(a) must not commence until a Battery Safety Management Plan (“BSMP”) has been submitted to and approved by the relevant planning authority.

(2) The BSMP must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No.2(a) including the transportation of new, used and replacement battery cells both to and from the authorised development.

(3) The BSMP must accord with the outline battery safety management plan.

(4) The relevant planning authority must consult with the Health and Safety Executive and Kent Fire and Rescue Service before determining an application for approval of the BSMP.

(5) The BSMP must be implemented as approved.

Phases of authorised development

4.—(1) The authorised development may not be commenced until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme must be implemented as approved.

Landscape and biodiversity management plan

5.—(1) No phase of the authorised development may commence until a written landscape and biodiversity management plan (which accords with the outline landscape and biodiversity management plan) has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) The landscape and biodiversity management plan must be implemented as approved.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscape and biodiversity management plan approved under requirement (landscape and biodiversity management plan), and in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscaping management scheme that, within a period of five years after planting, 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.

Public rights of way diversions

7.—(1) No phase of the authorised development may commence until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the access and rights of way plans for that phase has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(2) The plan must include details of—

- (a) measures to minimise the length of any sections of public rights of way to be temporarily closed; and
- (b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

Fencing and other means of enclosure

8.—(1) No phase of the authorised development may commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works for that phase have been submitted to and approved by the relevant planning authority as part of the detailed design approval required by requirement 2(1).

(2) For the purposes of requirement 8(1), “commence” includes any site preparation works.

(3) Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development.

(4) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

(5) Any approved permanent fencing must be completed before completion of the authorised development.

Surface and foul water drainage

9.—(1) No phase of the authorised development may commence until details of the surface and (if any) foul water drainage system (including means of pollution control) for that phase have been submitted to and approved by the relevant planning authority in consultation with Kent County Council as lead local flood authority and the Lower Medway Internal Drainage Board.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details.

Archaeology

10.—(1) No phase of the authorised development may commence until a written scheme of archaeological investigation (which must accord with the outline written scheme of investigation) for that phase has been submitted to and approved by the relevant planning authority.

(2) For the purposes of requirement **10(1)**, “commence” includes any site preparation works.

(3) In the event that site investigation is required, the scheme must include details of the following—

- (a) an assessment of significance and research questions;
- (b) the programme and methodology of site investigation and recording;
- (c) the programme for post investigation assessment;
- (d) provision for analysis of the site investigation and recording;
- (e) provision for publication and dissemination of the analysis and records of the site investigation;
- (f) provision for archive deposition of the analysis and records of the site investigation; and
- (g) nomination of a competent person, persons or organisation to undertake the works set out within the written scheme of investigation.

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

(5) In the event that site investigation is required, the site investigation and post investigation assessment must be completed in accordance with the programme set out in the written scheme of archaeological investigation and provision made for analysis, publication and dissemination of results and archive deposition.

Construction environmental management plan

11.—(1) No phase of the authorised development may commence until a construction environmental management plan (which must accord with the outline construction environmental management plan) for that phase has been submitted to and approved by the relevant planning authority, in consultation with the relevant highway authority and the Environment Agency.

(2) The construction environmental management plan must include the following documents relevant to the phase of the authorised development in respect of which it is submitted—

- (a) site waste management plan;
- (b) breeding bird protection plan;
- (c) new watercourse crossing inventory; and
- (d) upgraded watercourse crossing inventory.

- (3) The construction environmental management plan must be implemented as approved.

Construction traffic management plan

12.—(1) No phase of the authorised development may commence until written details of a construction traffic management plan (which must accord with the outline construction traffic management plan) for that phase has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

- (2) The construction traffic management plan must be implemented as approved.

Special protection area construction noise management plan

13.—(1) No phase of the authorised development may commence until written details of a special protection area construction noise management plan (which must accord with the outline special protection area construction noise plan) for that phase has been submitted to and approved by the relevant planning authority.

- (2) The special protection area construction noise management plan must be implemented as approved.

Protected species

14.—(1) No phase of the authorised development may commence until final pre-construction survey work has been carried out for that phase to establish whether a protected species is present on any of the land affected, or likely to be affected, by the authorised development or in any of the trees to be lopped or felled as part of that stage of the connection works.

- (2) For the purposes of requirement [14\(1\)](#) “commence” includes any site preparation works.

(3) Where a protected species is shown to be present, the phase of the authorised development must not begin until, after consultation with Natural England and the relevant planning authority, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority.

- (4) The authorised development must be carried out in accordance with the approved scheme.

(5) In this requirement, “protected species” refers to any species defined as a European Protected Species in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017⁽¹⁾ or any species to which Part I (wildlife) and Schedule 5 (animals which are protected) of the Wildlife and Countryside Act 1981⁽²⁾ applies.

Operational noise

15.—(1) No phase of the authorised development may commence until an operational noise assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the operational noise rating levels as set out in the environmental statement are to be complied with for that phase has been submitted to and approved by the relevant local planning authority.

- (2) The design as described in the operational noise assessment must be implemented as approved.

(1) [S.I. 2017/1012](#).

(2) [1981 c.69](#).

Local skills, supply chain and employment

16.—(1) No phase of the authorised development may commence until for that phase a skills, supply chain and employment plan in relation to the authorised development (which accords with the outline skills, supply chain and employment plan) has been submitted to and approved by the relevant planning authority.

(2) The skills, supply chain and employment plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development, and the means for publicising such opportunities.

(3) The skills and employment plans must be implemented as approved.

Decommissioning

17.—(1) Within 14 days of the date of final commissioning the undertaker must serve written notice on the relevant planning authority and the Environment Agency of the date of final commissioning.

(2) No later than the 35th anniversary of the date of final commissioning, the undertaker and Environment Agency must—

(a) undertake a review of the progress made by the Environment Agency in respect of managed realignment of the existing flood defence, with particular regard to the timescales for achieving—

(i) all necessary consents and approvals;

(ii) all the land and/or rights over land; and

(iii) funding required for managed realignment of the existing flood defence; and

(b) as soon as reasonably practicable following that review, submit a managed realignment programme to the relevant planning authority, which sets out the timescales for achieving the matters prescribed in sub-paragraphs to inclusively and the anticipated date by which the parts of the authorised development required for managed realignment of the existing flood defence must be decommissioned.

(3) If the Environment Agency is unable to satisfy the requirements of sub-paragraph on or before the 35th anniversary of the date of final commissioning, the process set out in that sub-paragraph must be repeated every five years thereafter until the Environment Agency is able to submit a managed realignment programme to the relevant planning authority compliant with that sub-paragraph.

(4) The Environment Agency must consult, and have regard to any representations received from, the undertaker in respect of the managed realignment programme before it is submitted to the relevant planning authority and if the undertaker and Environment Agency cannot agree the timescales to be included in the managed realignment programme those timescales shall be determined pursuant to article 35 (arbitration).

(5) The Environment Agency may submit an application to the relevant planning authority for a decommissioning notice to be served on the undertaker in accordance with the managed realignment programme submitted pursuant to sub-paragraph or provided that it has first consulted, and had regard to, any submissions on the application made by the undertaker.

(6) The application made pursuant to sub-paragraph must be accompanied by evidence that the Environment Agency has secured the matters prescribed in sub-paragraphs to inclusively.

(7) Within eight weeks of receiving an application pursuant to sub-paragraph , or such other timescale as may be agreed in advance with the undertaker, the relevant planning authority must serve the decommissioning notice on the undertaker.

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- (8) Before serving the decommissioning notice, the relevant planning authority must—
 - (a) be satisfied on the evidence before it that the Environment Agency has secured the matters prescribed in sub-paragraphs to inclusively; and
 - (b) consult, and have regard to, any submissions made by the undertaker.
- (9) The decommissioning notice must—
 - (a) give reasons for the relevant planning authority determining that the Environment Agency has secured the matters prescribed in sub-paragraphs to inclusively;
 - (b) include a plan detailing the extent of land within the Order limits required for managed realignment of the existing flood defence;
 - (c) not be served—
 - (i) within a period of 40 years from the date of final commissioning, or until such later time as any appeal, arbitration or judicial review of any decommissioning notice served pursuant to this Requirement has been determined, and provide that the authorised development may continue to generate and store electricity on a commercial basis until the later of those periods has been determined; and
 - (ii) in respect of any land within the Order limits that is not required for managed realignment of the existing flood defence as shown on the plan required by of this sub-paragraph.
- (10) The undertaker must submit the decommissioning and restoration plan to the relevant planning authority for approval within 3 months of the earlier of—
 - (a) all or part of the Order land ceasing to be used for the purposes of electricity generation or storage (either actively generating electricity or being available to generate electricity on a standby basis);
 - (b) the date of the decommissioning notice served pursuant to sub-paragraph ; or
 - (c) such other timescale as may be approved by the relevant planning authority in writing.
- (11) The decommissioning and restoration plan required by sub-paragraph must—
 - (a) accord with the outline decommissioning and restoration plan;
 - (b) state the date by which the authorised development will be decommissioned; and
 - (c) not require the undertaker to decommission the existing flood defence located within the Order limits.
- (12) The decommissioning and restoration plan required must be implemented as approved.
- (13) In this requirement the following definitions have effect—

“date of final commissioning” means the date on which the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

“decommissioning and restoration plan” means the decommissioning and restoration plan approved by the relevant planning authority pursuant to sub-paragraph which sets out how the authorised development should be decommissioned and the specification to which the land should be restored having regard to the outline decommissioning and restoration plan and whether or not that land is required for managed realignment of the existing flood defence;

“decommissioning notice” means the notice to be served by the relevant planning authority on the undertaker pursuant to sub-paragraph which confirms the requirement for the authorised development to be decommissioned having regard to the managed realignment programme and the matters prescribed in sub-paragraph ;

“managed realignment of the existing flood defence” means the physical realignment of the existing flood defence located within the Order limits (that would require the removal of all or any part of Work No. 1, 2 and 3) as it exists at the date of this Order and as described in the Medway Estuary and Swale Strategy published on 10 September 2019 or as otherwise agreed between the undertaker and the Environment Agency, or determined by article 35 (arbitration); and

“managed realignment programme” means the managed realignment programme required to be submitted to the relevant planning authority by the Environment Agency pursuant to sub-paragraph or which sets out the timescales within which the Environment Agency reasonably expects the matters prescribed in sub-paragraphs to inclusively to be secured such that managed realignment of the existing flood defence can be achieved.

Requirement for written approval

18. Where the approval, agreement or confirmation of the relevant planning authority or another person is required under a requirement, that approval, agreement or confirmation must be given in writing.

Amendments to approved details

19.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or another person, the approved details must be carried out as approved unless an amendment or variation is previously agreed in writing by the relevant planning authority or that other person in accordance with sub-paragraph .

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other person.

Consultation

20. Where the relevant planning authority is required by this Order or other statute to consult with another person or body prior to discharging a requirement, the undertaker must consult with such person or body prior to making an application to discharge the requirement.

PART 3

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

21. In this Part of this Schedule, “discharging authority” means—

- (a) any body responsible for giving any consent, agreement or approval required by a requirement included in Part 2 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or

- (b) the local authority in the exercise of its functions set out in sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 subsequently referred to as “the 1974 Act”⁽³⁾.

Applications made under requirements

22.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with—

- (a) the day immediately following that on which the application is received by the discharging authority; or
- (b) where further information is requested under paragraph , the day immediately following that on which the further information has been supplied by the undertaker, or such longer period as may be agreed in writing by the undertaker and the discharging authority.

(2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, the discharging authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.

Further information regarding requirements

23.—(1) In relation to any application referred to in paragraph , the discharging authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the discharging authority considers that further information is necessary and the requirement concerned contained in Part 2 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 2 of this Schedule specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the discharging authority does not give the notification within the period specified in subparagraph or it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Appeals

24.—(1) Where a person (“the applicant”) makes an application to a discharging authority, the applicant may appeal to the Secretary of State in the event that—

(3) 1974 c.40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c.55), Schedule 15 to the Environmental Protection Act 1990 (c.43) and Schedule 24 to the Environment Act 1995 (c.25).

- (a) the discharging authority refuses an application for any consent, agreement or approval required by—
 - (i) a requirement contained in Part 2 of this Schedule; or
 - (ii) a document referred to in any requirement contained in Part 2 of this Schedule;
 - (b) the discharging authority does not determine such an application within the time period set out in paragraph 22(1), or grants it subject to conditions;
 - (c) the discharging authority issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;
 - (d) on receipt of a request for further information pursuant to paragraph of this Part of this Schedule, the applicant considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
 - (e) on receipt of any further information requested, the discharging authority notifies the applicant that the information provided is inadequate and requests additional information which the applicant considers is not necessary for consideration of the application.
- (2) The appeal process is as follows—
- (a) any appeal by the applicant must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 22(1), giving rise to the appeal referred to in sub-paragraph (1);
 - (b) the applicant must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any consultee specified under the relevant requirement contained in Part 2 of this Schedule;
 - (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider 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 the attention of the appointed person should be sent;
 - (d) the discharging authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within ten business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;
 - (e) the applicant must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph above; and
 - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter-submissions under sub-paragraph .
- (3) The appointment of the appointed person pursuant to sub-paragraph may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party 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 must 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 appointed person must notify the appeal parties of the

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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 date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in sub-paragraphs to .

- (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 discharging 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 such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

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

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

(11) Save where a direction is given pursuant to sub-paragraph requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the applicant.

(12) On application by the discharging authority or the applicant, the appointed person may give directions as to the costs of the appeal 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 relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.

SCHEDULE 2

Article 8

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
Swale Borough	A farm track between the two points marked E and a point marked G and coloured yellow on figure 2 of the streets and access plan
Swale Borough	An existing track between the two points marked A and coloured green on figure 3 of the streets and access plan

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
Swale Borough	An existing track between the two points marked B and coloured orange on figure 3 of the streets and access plan
Swale Borough	An existing track between the two points marked D and coloured yellow on figure 3 of the streets and access plan
Swale Borough	A farm track between the two points marked E and G and coloured yellow on figure 3 of the streets and access plan
Canterbury City	A farm track between the two points marked F and coloured yellow on figure 3 of the streets and access plan

SCHEDULE 3

Article 10

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Swale Borough	A farm track coloured yellow on figure 2 of the streets and access plan	Between the two points marked E and a point marked G and coloured yellow on figure 2 of the streets and access plan
Swale Borough	An existing track coloured green on figure 3 of the streets and access plan	Between the two points marked A on figure 3 of the streets and access plan
Swale Borough	An existing track coloured orange on figure 3 of the streets and access plan	Between the two points marked B on figure 3 of the streets and access plan
Swale Borough	An existing track coloured yellow on figure 3 of the streets and access plan	Between the two points marked D on figure 3 of the streets and access plan
Swale Borough	A farm track coloured yellow on figure 3 of the streets and access plan	Between the two points marked E and G on figure 3 of the streets and access plan
Canterbury City	A farm track coloured yellow on figure 3 of the streets and access plan	Between the two points marked F on figure 3 of the streets and access plan

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SCHEDULE 4

Article 11

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Swale Borough	Footpath ZR 484 (Saxon Shore Way)	Between the points marked A as shown on figures 2 and 3 of the rights of way plan
Swale Borough	Footpath ZR 485	Between the points marked B as shown on figure 2 of the rights of way plan
Swale Borough	Footpath ZR 488	Between the points marked C as shown on figure 3 of the rights of way plan
Swale Borough	Footpath ZR 692	Between the points marked D as shown on figure 3 of the rights of way plan
Canterbury City	Footpath CW90	Between the points marked E as shown on figure 3 of the rights of way plan
Canterbury City	Footpath CW55 (Saxon Shore Way)	Between the points marked F as shown on figure 3 of the rights of way plan

SCHEDULE 5

Article 18

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Plot number(s)</i>	<i>(2)</i> <i>Work No.</i>	<i>(3)</i> <i>Purpose for which rights may be acquired</i>
3/06, 3/06B, 3/07, 3/07A, 3/07B, 3/08, 3/08A	5	Rights to install, use, protect, inspect, alter, remove, replace, improve and maintain electrical underground cables, telecommunications cables and other services including rights of access without or without vehicles, plant and machinery for all purposes in connection with the construction, use, maintenance

<i>(1)</i> <i>Plot number(s)</i>	<i>(2)</i> <i>Work No.</i>	<i>(3)</i> <i>Purpose for which rights may be acquired</i>
		<p>and decommissioning of the authorised development.</p> <p>Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights.</p>
3/06, 3/10, 3/12, 3/13	7, 9	<p>Rights to use, alter, improve and maintain an existing means of access including rights of access with or without vehicles, plant and machinery for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development.</p> <p>Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights.</p>
3/11	8	<p>Rights to create, manage, alter, improve and maintain a habitat management area including rights of access without or without vehicles, plant and machinery for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development.</p> <p>Restrictions on erecting buildings or structures, altering ground levels or carrying out operations or actions which may obstruct, interrupt, or</p>

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(1) <i>Plot number(s)</i>	(2) <i>Work No.</i>	(3) <i>Purpose for which rights may be acquired</i>
		interfere with the exercise of the rights.
1/01, 1/02, 1/03, 1/06, 1/07, 1/08, 1/09, 1/10, 2/01, 2/02, 2/03, 2/05, 2/06, 2/07, 2/08, 2/09, 2/10, 2/11, 2/12, 2/13, 2/14, 2/15, 2/16, 2/17, 2/18, 2/19, 2/20, 2/21, 2/22, 2/23, 2/24, 2/25, 2/26, 2/27, 2/28, 3/01, 3/01A, 3/01B, 3/02, 3/02A, 3/02B, 3/03, 3/03A, 3/03B, 3/10, 3/11, 4/01, 4/02, 4/03, 4/04, 4/05, 4/06	9	Rights to inspect, maintain, repair, alter, remove and reconstruct the flood defences including rights of access without or without vehicles, plant and machinery for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development. Restrictions on erecting buildings or structures, altering ground levels or carrying out operations or actions which may obstruct, interrupt, or interfere with the exercise of the rights.

SCHEDULE 6

Article 18

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

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

2.—(1) Without limitation to the scope of paragraph , the Land Compensation Act 1973(4) has effect subject to the modifications set out in sub-paragraph .

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

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

(4) 1973 c.26.

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

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

“(5A) If—

- (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 of Schedule 7 to the Cleve Hill Solar Park Order 2020
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph of Schedule 7 to the Cleve Hill Solar 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 the 1965 Act

4.—(1) The 1965 Act is to have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

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

(2) Without limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

5. For section 7 (measure of compensation in the case of severance) of the 1965 Act there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall 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.”.

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

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

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

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7. Section 11 (powers of entry) of the 1965 Act is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 19), 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 (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

8. Section 20 (protection for interests of 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.

9. Section 22 (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) of the 1965 Act as modified by article 22(4) is so 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 restrictive covenant imposed, subject to compliance with that section as respects compensation.

10. 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 of the 1981 Act as applied by article 20 (application of the 1981 Act) of the Cleve Hill Solar Park Order 2020 in respect of the land to which the notice to treat relates.

(2) But see article 21(3) (acquisition of subsoil only) of the Cleve Hill Solar 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 28 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 3 months beginning with the day on which the counter-notice is served (“the decision period”).

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

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

Determination by the Upper Tribunal

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 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph 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 7

Article 38

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS,
WATER AND SEWERAGE UNDERTAKERS**Application**

1. For the protection of the affected undertakers referred to in this Part of this Schedule (save for National Grid which is protected by Part 2 of this Schedule, Blue Transmission London Array Limited which is protected by Part 5 of this Schedule, and UKPN which is protected by Part 6 of this Schedule) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

2. In this Part of this Schedule—

“affected undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986⁽⁵⁾;
- (c) a water undertaker within the meaning of the Water Industry Act 1991⁽⁶⁾; or
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development but, for the avoidance of doubt, does not include the undertaker specified in Part 2 (National Grid) of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) 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;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and

⁽⁵⁾ 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).

⁽⁶⁾ 1991 c.56.

- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 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 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; and

“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.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (water supply) of the 1991 Act.

No acquisition etc. except by agreement

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

Removal of apparatus

5.—(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, that apparatus must not be removed under this Part of this Schedule and any right of an affected undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected 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 an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph , afford to the affected 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 , in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected 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 affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-

paragraph or , 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 , if the undertaker gives notice in writing to the affected 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 affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

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

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected 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 affected undertaker in question or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected 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 affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph , the undertaker must submit to the affected 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 by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph 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 an affected undertaker in accordance with sub-paragraph 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 to apply as if the removal of the apparatus had been required by the undertaker under paragraph .

(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 affected 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 in so far as is reasonably practicable in the circumstances.

Expenses and costs

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected 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 .

(2) There must 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 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph —

- (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 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 an affected undertaker 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 7 years and 6 months earlier so as to confer on the affected undertaker 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.

9.—(1) Subject to sub-paragraphs and , if by reason or in consequence of the construction of any such works referred to in paragraph , 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 an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

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

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

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 affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

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

PART 2

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

1. 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

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the National Grid to enable the 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;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) for the purposes of this Part of this Schedule and shall include 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;

“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 National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary mitigation 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, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

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

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the 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;

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

“specified works” means any of the authorised development 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 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise.

3. Except for paragraphs (apparatus of National Grid in streets subject to temporary stopping up), (retained apparatus: protection of National Grid as electricity undertaker) (expenses) and (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary stopping up

4.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in this Order, where any street is stopped up under article 10 (temporary 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 the National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up under the powers of article 10 (temporary stopping up of streets), National Grid will be at liberty at all times to take all necessary access across any such street 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

5.—(1) The undertaker, in the case of the powers conferred by article 14 (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 which will not unreasonably be withheld 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, 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 , shall—

- (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

6.—(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 acquire any land interest or apparatus or override any easement or other interest 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 works (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 the undertaker and National Grid 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 the undertaker and National Grid acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid 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 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any Order 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-paragraphs (2) to inclusive.

(2) If, for the purpose of executing any works compromised in the authorised development 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 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 , afford to National Grid to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

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

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

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or , 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

8.—(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 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 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 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) 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 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 under paragraph (arbitration) of this Part of this Schedule and the arbitrator shall 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 article 35 (arbitration) of this Order shall apply.

Retained apparatus: Protection of National Grid as Electricity Undertaker

9.—(1) Not less than 56 days before the commencement of any authorised development that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise and to which paragraph or applies, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

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

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must in addition to the matters set out in sub-paragraph 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 the National Grid's engineers; and
- (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-paragraphs (1), , or apply until National Grid has given written approval of the plan so submitted.

- (5) Any approval of National Grid required under sub-paragraphs (1), , or —
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs or ; and
 - (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraphs (1) , or 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-paragraphs , or as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs , , and/or 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 either 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 authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1) , , or (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs or 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, sub-paragraphs (1) to and to shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph shall preclude 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 , and insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker shall 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 apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including

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without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph ;

- (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; and
- (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 settled by arbitration in accordance with article 35 (arbitration) of this Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save 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 —

- (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) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11.—(1) Subject to sub-paragraphs and , if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use,

maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by 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 purpose of those works) 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 will—

- (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.

(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 as a consequence of the authorised development or under its supervision will not (unless sub-paragraph applies), excuse the undertaker from liability under the provisions of this sub-paragraph where 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 materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(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 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 the undertaker with the benefit of this Order pursuant to section 156 (benefit of order granting development consent) of the 2008 Act or article 5 (consent to transfer benefit of Order) of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus.

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

(5) National Grid 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 applies where it is within National Grid’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control. If reasonably requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised, where possible.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and National Grid, nothing in this Part of this Schedule shall affect 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

13.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph , the undertaker shall 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 shall use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

14. If in consequence of the agreement reached in accordance with paragraph 6 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

15. Save for differences or disputes arising under paragraphs 7(2), , 8(1) and 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 35 (arbitration).

Notices

16. The plans submitted to National Grid by the undertaker pursuant to paragraph 9(1) must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 3

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽⁷⁾;

“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.

3. The exercise of the powers of article 26 (statutory undertakers) are subject to part 10 of Schedule 3A (Undertaker’s works affecting electronic communications apparatus) to the Communications Act 2003⁽⁸⁾.

4.—(1) Subject to sub-paragraphs to , if as the result of the authorised development or their 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
- (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 must—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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 may be made without the consent of the undertaker which, if it withholds such consent, will have 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 paragraph must be referred to and settled by arbitration under article 35 (arbitration).

5. 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.

(7) See section 106.

(8) 2003 c.21.

6. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus 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 DRAINAGE AUTHORITIES

1. The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between undertaker and the drainage authority.

2. In this Part—

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

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

“drainage authority” means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991;

“drainage work” means any watercourse including any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring excluding the existing flood defence;

“ordinary watercourse” has the meaning given in the Land Drainage Act 1991(9);

“plans” includes sections, drawings, specifications 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 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 of water in any watercourse; or
- (c) affect the conservation, distribution or use of water resources.

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

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

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

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or submission of further particulars if required by the drainage authority under sub-paragraph (1)) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work.

(9) 1991 c.59, section 72(1).

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

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

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

by reason of any specified work.

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

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the drainage authority 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 drainage authority reasonably requires.

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

(6) In the event of any dispute as to whether sub-paragraph 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 drainage authority must not except in emergency exercise the powers conferred by sub-paragraph until the dispute has been finally determined.

6.—(1) Subject to sub-paragraph the undertaker must from the commencement of the construction of any specified work maintain in good repair and condition and free from obstruction any drainage work that is situated within the limits of deviation on land held by the undertaker for the

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purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority 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 drainage authority 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 drainage authority reasonably requires.

(3) 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 on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph , the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph until the dispute has been finally determined.

(5) This paragraph does not apply to—

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

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

8. The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans under this Part;
- (b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and
- (c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work.

9.—(1) Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such land,

that is caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority 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).

10. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

11. Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 35 (arbitration).

PART 5

FOR THE PROTECTION OF BLUE TRANSMISSION LONDON ARRAY LIMITED

Application

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

Interpretation

2. In this Part of this Schedule—

“agreements” means (i) the Cooperation Agreement and (ii) the Land and Works Agreement in the agreed form, or substantially the same form, as the terms settled between BTLAL and the undertaker on 12 November 2019, or as otherwise agreed in writing between the undertaker and BTLAL;

“apparatus” means the existing cables having transportation of electric power as its primary purpose and any existing associated low voltage, fibre-optic control or communications cable from the London Array offshore windfarm to the BTLAL substation at Cleve Hill near Graveney;

“BTLAL” means Blue Transmission London Array Limited (company number 08275752);

“cable corridor land” means all land in which the apparatus lies as identified on Sheet 3 of the Land Plan labelled 3/05;

“commence” has the same meaning as in article 2 of this Order and commencement must be construed to have the same meaning;

“lenders” means those parties having loaned monies to BTLAL in respect of the apparatus at the time the agreements are entered into.

Agreements

3. If, at any point during the construction of the development any work is to be undertaken on the cable corridor land the undertaker shall not commence the works unless—

- (a) the agreements have been entered into by the undertaker and BTLAL; or
- (b) in the event the agreements are not entered into, such alternative protection as determined pursuant to paragraph 5 is in place for the protection of BTLAL.

Co-operation

4.—(1) If reasonable and equitable amendments are required by the lenders, but only where as a consequence of achieving the approval of the agreements from those lenders, the undertaker and BTLAL shall co-operate with each other and at all times act in good faith for the purpose of trying to agree those amendments.

(2) For the avoidance of doubt whenever the undertaker’s or BTLAL’s consent, agreement or approval is required under this Part of this Schedule it must not be unreasonably withheld or delayed.

Arbitration

5. Any difference or dispute arising between the undertaker and BTLAL under this Part of this Schedule, including but not limited to the terms of the agreements, must, unless otherwise agreed in writing between the undertaker and BTLAL, be determined by arbitration in accordance with article 35 (arbitration).

PART 6

FOR THE PROTECTION OF UKPN

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

2. In this part of this Schedule—

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

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

“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

“UKPN” means South Eastern Power Networks plc (Company No. 03043097) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP;

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and UKPN are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 10 (temporary stopping up of streets), UKPN 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.

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

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that UKPN’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of UKPN 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 UKPN in accordance with sub-paragraphs to .

(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 UKPN 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 UKPN reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph , afford to UKPN 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 , in the land in which the alternative apparatus or part of such apparatus is to be constructed, UKPN 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 provided that this obligation shall not require UKPN to exercise any power it may have to acquire any land or rights by compulsory purchase order.

(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 UKPN and the undertaker or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(5) UKPN must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration), and after the grant to UKPN of any such facilities and rights as are referred to in sub-paragraph or , 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 , if the undertaker gives notice in writing to UKPN 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 UKPN, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of UKPN.

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

7.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to UKPN 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 UKPN or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to UKPN 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 UKPN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect,

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any apparatus the removal of which has not been required by the undertaker under paragraph , the undertaker must submit to UKPN 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 by UKPN for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and UKPN is entitled to watch and inspect the execution of those works.

(3) Any requirements made by UKPN under sub-paragraph 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 UKPN in accordance with sub-paragraph 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 and apply as if the removal of the apparatus had been required by the undertaker under paragraph .

(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 UKPN 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 in so far as is reasonably practicable in the circumstances.

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

(2) 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 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to UKPN by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph —

- (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 6(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 UKPN 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 UKPN any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs and , if by reason or in consequence of the construction of any of the works referred to in paragraph , 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 UKPN, or there is any interruption in any service provided, or in the supply of any goods, by UKPN, the undertaker must—

- (a) bear and pay the cost reasonably incurred by UKPN in making good such damage or restoring the supply; and
- (b) indemnify UKPN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from UKPN,

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 UKPN, its officers, servants, contractors or agents.

(3) UKPN 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.

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

12. Any difference under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and UKPN, be determined by arbitration in accordance with article 35 (arbitration).

SCHEDULE 8

Article 29

DEEMED MARINE LICENCE UNDER THE 2009 ACT

PART 1

LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

“the 2009 Act” means the Marine and Coastal Access Act 2009;

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

“authorised deposits” means the substances and articles specified in paragraph of Part 1 of this licence;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised development) of the Order;

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence;

“condition” means a condition in Part 2 of this licence;

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

“existing flood defence” means the existing bund and integrated infrastructure located beneath the path known as the Saxon Shore Way and to the north and west of the authorised development;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 1 of this licence;

“MMO” means the Marine Management Agency, the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“the location, order limits and grid coordinates plan” means the plan certified as the location, order limits and grid coordinates plan by the Secretary of State for the purposes of the Order under article 34 (certification of plans and documents, etc.);

“MHWS” means the highest level which spring tides reach on average over a period of time;

“Order” means the Cleve Hill Solar Park Order 2020;

“undertaker” means Cleve Hill Solar Park Limited (company number 08904850);

“Work No. 9” means the work of that description in Schedule 1 of the Order; and

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

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT); and

(b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the MMO, notices to the MMO must be sent to—

(a) Marine Management Organisation

Marine Licensing

Lancaster House

Newcastle Business Park

Newcastle upon Tyne

NE4 7YH

Tel: 0300 123 1032; and

(b) Marine Management Organisation (local office)

Fish Market

Rock-A-Nore Road
Hastings
East Sussex
TN34 3DW

Details of licensed marine activities

2.—(1) Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

(2) Such activities are authorised in relation to—

Work No.9— works to maintain the existing flood defence, comprising—

- (a) inspection;
- (b) investigation (above MHWS, inclusive of trial pitting);
- (c) replacement of expansion joint material;
- (d) concrete repair (to a standard specified in BS EN 1504);
- (e) replacement of concrete toe beam;
- (f) vegetation management (including grass cutting and removal of larger vegetation);
- (g) replacement of loose and missing block work;
- (h) repair of voids;
- (i) fencing repair and replacement;
- (j) servicing outfalls;
- (k) cleaning outfall ancillary structures;
- (l) topping up of embankment crest levels at localised low spots;
- (m) vermin control;
- (n) repairs of rutting in crest;
- (o) repointing of jointed structures;
- (p) replacing modular blocks;
- (q) replacement of toe armour as required;
- (r) reinstatement of timber toe piles;
- (s) timber groyne plank replacement;
- (t) replacement of bolts on groyne;
- (u) placement of timber rubbing boards on groyne;
- (v) localised movements of beach material;
- (w) cleaning/dredging of drainage ditch channels;
- (x) replacement of pitching where present;
- (y) replacement of access structures;
- (z) painting; and

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

- (aa) any other activities required to be undertaken which—
- (i) use the same materials as those on the existing flood defence;
 - (ii) do not alter the plan form or cross section of the existing flood defence;
 - (iii) do not provide an overall increase or reduction in flood level; and
 - (iv) do not require excavations of beach material deeper than 1.5 metres.
3. The substances or articles authorised for deposit at sea include—
- (a) iron and steel, copper and aluminium;
 - (b) stone and rock;
 - (c) concrete;
 - (d) sand and gravel;
 - (e) timber;
 - (f) plastic and synthetics;
 - (g) marine coatings; and
 - (h) material extracted from within the offshore Order limits.
4. The grid coordinates for that part of the authorised development comprising Work No. 9 are specified below and more particularly on the location, order limits and grid coordinates plan—

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	51° 19' 56.946" N	0° 54' 46.089" E	100	51° 20' 32.408" N	0° 54' 7.763" E
2	51° 19' 58.535" N	0° 54' 45.298" E	101	51° 20' 33.143" N	0° 54' 9.545" E
3	51° 19' 58.708" N	0° 54' 45.201" E	102	51° 20' 34.285" N	0° 54' 13.532" E
4	51° 19' 59.027" N	0° 54' 45.080" E	103	51° 20' 35.087" N	0° 54' 17.689" E
5	51° 19' 59.384" N	0° 54' 44.724" E	104	51° 20' 35.317" N	0° 54' 21.662" E
6	51° 19' 59.960" N	0° 54' 44.350" E	105	51° 20' 37.215" N	0° 54' 36.902" E
7	51° 20' 1.300" N	0° 54' 43.858" E	106	51° 20' 37.791" N	0° 54' 38.342" E
8	51° 20' 2.911" N	0° 54' 42.665" E	107	51° 20' 37.114" N	0° 54' 46.675" E
9	51° 20' 3.116" N	0° 54' 42.384" E	108	51° 20' 37.181" N	0° 54' 46.705" E
10	51° 20' 4.788" N	0° 54' 40.819" E	109	51° 20' 37.035" N	0° 54' 49.041" E
11	51° 20' 4.959" N	0° 54' 40.563" E	110	51° 20' 36.955" N	0° 54' 49.652" E
12	51° 20' 5.438" N	0° 54' 40.227" E	111	51° 20' 36.954" N	0° 54' 49.874" E
13	51° 20' 6.231" N	0° 54' 38.746" E	112	51° 20' 36.983" N	0° 54' 50.130" E
14	51° 20' 6.637" N	0° 54' 38.090" E	113	51° 20' 36.985" N	0° 54' 50.419" E
15	51° 20' 7.311" N	0° 54' 36.551" E	114	51° 20' 36.920" N	0° 54' 50.652" E
16	51° 20' 7.817" N	0° 54' 35.012" E	115	51° 20' 37.006" N	0° 54' 51.158" E
17	51° 20' 8.559" N	0° 54' 30.512" E	116	51° 20' 37.215" N	0° 54' 50.375" E
18	51° 20' 8.713" N	0° 54' 28.690" E	117	51° 20' 37.673" N	0° 54' 46.063" E

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
19	51° 20' 8.886" N	0° 54' 27.093" E	118	51° 20' 38.109" N	0° 54' 39.463" E
20	51° 20' 8.229" N	0° 54' 29.798" E	119	51° 20' 36.284" N	0° 54' 26.251" E
21	51° 20' 7.773" N	0° 54' 32.964" E	120	51° 20' 35.445" N	0° 54' 16.667" E
22	51° 20' 6.916" N	0° 54' 36.190" E	121	51° 20' 34.876" N	0° 54' 13.691" E
23	51° 20' 5.271" N	0° 54' 39.948" E	122	51° 20' 33.400" N	0° 54' 8.742" E
24	51° 20' 1.514" N	0° 54' 43.309" E	123	51° 20' 32.885" N	0° 54' 7.478" E
25	51° 19' 59.852" N	0° 54' 43.782" E	124	51° 20' 32.714" N	0° 54' 5.934" E
26	51° 20' 11.941" N	0° 54' 13.217" E	125	51° 20' 32.081" N	0° 54' 3.003" E
27	51° 20' 11.877" N	0° 54' 12.095" E	126	51° 20' 36.869" N	0° 54' 51.672" E
28	51° 20' 11.663" N	0° 54' 10.398" E	127	51° 20' 36.819" N	0° 54' 51.640" E
29	51° 20' 11.436" N	0° 54' 9.385" E	128	51° 20' 36.762" N	0° 54' 51.642" E
30	51° 20' 10.399" N	0° 54' 6.406" E	129	51° 20' 36.711" N	0° 54' 51.724" E
31	51° 20' 10.522" N	0° 54' 7.338" E	130	51° 20' 36.674" N	0° 54' 51.969" E
32	51° 20' 10.085" N	0° 53' 46.895" E	131	51° 20' 36.662" N	0° 54' 52.243" E
33	51° 20' 10.324" N	0° 53' 47.052" E	132	51° 20' 36.643" N	0° 54' 52.308" E
34	51° 20' 10.497" N	0° 53' 47.265" E	133	51° 20' 36.557" N	0° 54' 52.486" E
35	51° 20' 10.555" N	0° 53' 47.377" E	134	51° 20' 36.597" N	0° 54' 52.469" E
36	51° 20' 10.609" N	0° 53' 47.678" E	135	51° 20' 36.651" N	0° 54' 52.486" E
37	51° 20' 10.685" N	0° 53' 56.589" E	136	51° 20' 42.418" N	0° 55' 36.744" E
38	51° 20' 10.577" N	0° 53' 57.633" E	137	51° 20' 42.431" N	0° 55' 37.288" E
39	51° 20' 10.677" N	0° 53' 57.274" E	138	51° 20' 42.700" N	0° 55' 40.210" E
40	51° 20' 10.741" N	0° 53' 56.919" E	139	51° 20' 42.775" N	0° 55' 40.607" E
41	51° 20' 10.759" N	0° 53' 56.703" E	140	51° 20' 42.916" N	0° 55' 40.911" E
42	51° 20' 10.691" N	0° 53' 47.644" E	141	51° 20' 42.913" N	0° 55' 41.691" E
43	51° 20' 10.658" N	0° 53' 47.286" E	142	51° 20' 43.090" N	0° 55' 42.369" E
44	51° 20' 10.631" N	0° 53' 47.191" E	143	51° 20' 43.208" N	0° 55' 42.254" E
45	51° 20' 10.417" N	0° 53' 46.970" E	144	51° 20' 43.241" N	0° 55' 43.046" E
46	51° 20' 10.380" N	0° 53' 46.880" E	145	51° 20' 43.362" N	0° 55' 43.772" E
47	51° 20' 10.348" N	0° 53' 46.718" E	146	51° 20' 43.555" N	0° 55' 43.598" E
48	51° 20' 10.380" N	0° 53' 46.503" E	147	51° 20' 43.523" N	0° 55' 44.092" E
49	51° 20' 10.447" N	0° 53' 46.302" E	148	51° 20' 43.570" N	0° 55' 44.669" E
50	51° 20' 27.907" N	0° 53' 46.744" E	149	51° 20' 43.671" N	0° 55' 45.270" E
51	51° 20' 27.862" N	0° 53' 47.043" E	150	51° 20' 43.799" N	0° 55' 45.070" E

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

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
52	51° 20' 27.876" N	0° 53' 47.230" E	151	51° 20' 43.780" N	0° 55' 45.567" E
53	51° 20' 27.830" N	0° 53' 47.672" E	152	51° 20' 43.948" N	0° 55' 46.756" E
54	51° 20' 27.699" N	0° 53' 48.253" E	153	51° 20' 44.306" N	0° 55' 48.368" E
55	51° 20' 27.585" N	0° 53' 48.411" E	154	51° 20' 44.687" N	0° 55' 49.791" E
56	51° 20' 27.555" N	0° 53' 48.435" E	155	51° 20' 45.757" N	0° 55' 54.594" E
57	51° 20' 27.538" N	0° 53' 48.625" E	156	51° 20' 47.241" N	0° 56' 2.207" E
58	51° 20' 27.517" N	0° 53' 48.660" E	157	51° 20' 47.983" N	0° 56' 6.651" E
59	51° 20' 27.406" N	0° 53' 48.710" E	158	51° 20' 48.152" N	0° 56' 6.491" E
60	51° 20' 27.376" N	0° 53' 48.744" E	159	51° 20' 48.092" N	0° 56' 6.958" E
61	51° 20' 27.358" N	0° 53' 48.805" E	160	51° 20' 48.096" N	0° 56' 7.304" E
62	51° 20' 27.357" N	0° 53' 48.852" E	161	51° 20' 48.226" N	0° 56' 7.918" E
63	51° 20' 27.320" N	0° 53' 49.159" E	162	51° 20' 48.436" N	0° 56' 7.698" E
64	51° 20' 27.275" N	0° 53' 49.275" E	163	51° 20' 48.394" N	0° 56' 8.208" E
65	51° 20' 27.252" N	0° 53' 49.310" E	164	51° 20' 48.416" N	0° 56' 8.607" E
66	51° 20' 27.112" N	0° 53' 49.343" E	165	51° 20' 48.474" N	0° 56' 8.816" E
67	51° 20' 27.084" N	0° 53' 49.434" E	166	51° 20' 48.520" N	0° 56' 8.981" E
68	51° 20' 27.059" N	0° 53' 49.665" E	167	51° 20' 48.530" N	0° 56' 9.101" E
69	51° 20' 27.036" N	0° 53' 49.798" E	168	51° 20' 48.516" N	0° 56' 9.227" E
70	51° 20' 26.925" N	0° 53' 50.097" E	169	51° 20' 48.514" N	0° 56' 9.358" E
71	51° 20' 26.949" N	0° 53' 50.133" E	170	51° 20' 48.592" N	0° 56' 9.802" E
72	51° 20' 27.049" N	0° 53' 49.908" E	171	51° 20' 48.676" N	0° 56' 10.128" E
73	51° 20' 27.113" N	0° 53' 49.705" E	172	51° 20' 48.616" N	0° 56' 7.869" E
74	51° 20' 27.164" N	0° 53' 49.465" E	173	51° 20' 48.857" N	0° 56' 14.026" E
75	51° 20' 27.246" N	0° 53' 49.429" E	174	51° 20' 48.852" N	0° 56' 14.100" E
76	51° 20' 27.272" N	0° 53' 49.410" E	175	51° 20' 48.844" N	0° 56' 14.168" E
77	51° 20' 27.326" N	0° 53' 49.330" E	176	51° 20' 48.807" N	0° 56' 14.326" E
78	51° 20' 27.347" N	0° 53' 49.270" E	177	51° 20' 48.722" N	0° 56' 14.640" E
79	51° 20' 27.374" N	0° 53' 49.080" E	178	51° 20' 48.645" N	0° 56' 15.364" E
80	51° 20' 27.403" N	0° 53' 48.953" E	179	51° 20' 48.916" N	0° 56' 17.077" E
81	51° 20' 27.459" N	0° 53' 48.796" E	180	51° 20' 44.526" N	0° 56' 52.481" E
82	51° 20' 27.534" N	0° 53' 48.775" E	181	51° 20' 44.523" N	0° 56' 53.111" E
83	51° 20' 27.577" N	0° 53' 48.731" E	182	51° 20' 44.613" N	0° 56' 53.520" E
84	51° 20' 27.605" N	0° 53' 48.666" E	183	51° 20' 44.607" N	0° 56' 53.654" E

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
85	51° 20' 27.622" N	0° 53' 48.491" E	184	51° 20' 44.472" N	0° 56' 54.152" E
86	51° 20' 27.695" N	0° 53' 48.408" E	185	51° 20' 44.365" N	0° 56' 54.631" E
87	51° 20' 27.763" N	0° 53' 48.293" E	186	51° 20' 44.337" N	0° 56' 54.961" E
88	51° 20' 27.942" N	0° 53' 47.338" E	187	51° 20' 44.341" N	0° 56' 55.338" E
89	51° 20' 27.948" N	0° 53' 47.235" E	188	51° 20' 44.188" N	0° 56' 56.399" E
90	51° 20' 27.910" N	0° 53' 47.165" E	189	51° 20' 44.193" N	0° 56' 56.709" E
91	51° 20' 27.920" N	0° 53' 47.052" E	190	51° 20' 44.268" N	0° 56' 57.174" E
92	51° 20' 27.939" N	0° 53' 46.941" E	191	51° 20' 49.033" N	0° 56' 20.247" E
93	51° 20' 27.963" N	0° 53' 46.853" E	192	51° 20' 48.835" N	0° 56' 14.262" E
94	51° 20' 27.997" N	0° 53' 46.798" E	193	51° 20' 48.854" N	0° 56' 14.137" E
95	51° 20' 30.414" N	0° 53' 56.932" E	194	51° 20' 48.859" N	0° 56' 14.060" E
96	51° 20' 30.486" N	0° 53' 58.149" E	195	51° 20' 47.432" N	0° 56' 30.037" E
97	51° 20' 30.389" N	0° 53' 58.557" E	196	51° 20' 47.356" N	0° 56' 30.457" E
98	51° 20' 31.727" N	0° 54' 3.734" E	197	51° 20' 46.743" N	0° 56' 35.249" E
99	51° 20' 32.193" N	0° 54' 5.976" E	198	51° 20' 46.536" N	0° 56' 37.296" E

5. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within article 5 (consent to transfer benefit of Order).

6. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or project are taken to include any amendments that may subsequently be approved in writing by the MMO.

7. Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

CONDITIONS

Notifications regarding licensed activities

1. The licence holder must inform the MMO in writing of the commencement of the first licensed activity at least 24 hours prior to such commencement.

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

2.—(1) The licence holder must inform the MMO of the name and function of any agent or contractor appointed to engage in any licensed activity not less than 24 hours before the commencement of the licensed activity in question.

(2) Any changes to details supplied under sub-paragraph (1) must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activity in question.

(3) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

3. The licence holder must ensure that a copy of this Schedule has been read and understood by any agents and contractors that will be carrying out any licensed activity on behalf of the licence holder, as notified to the MMO under condition 10.

4. Copies of this Schedule must be available for inspection at the following locations—

- (a) the licence holder's registered office; and
- (b) during the construction of the authorised development only, at any site office which is adjacent to or near the river and which has been provided for the purposes of the construction of the authorised development.

Pollution prevention

5. The licence holder must—

- (a) not discharge waste concrete slurry or wash water from concrete, or cement into the marine environment, and where practicable, site concrete and cement mixing and washing areas at least 10 metres away from the marine environment and any surface water drain to minimise the risk of run off entering the marine environment;
- (b) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine environment, including bunding or storage of 110% of the total volume of all reservoirs and containers;
- (c) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team (by telephone, within office hours on 0300 200 2024, or outside office hours on 07770 977 825, and at all times, if no response to calls to those numbers, on 0345 051 8486 or via email using dispersants@marinemanagement.org.uk) within 12 hours of the spill occurring;
- (d) store all waste in designated areas that are isolated from surface water drains and open water and are bunded;
- (e) use suitable protective sheeting to prevent dust, debris (including paints and solvents) and rebounded or windblown concrete from entering the water environment, and rebounded material must be cleared away before the sheeting is removed;
- (f) ensure that any coatings and any treatments are suitable for use in the marine environment and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency;
- (g) not use priority substances and polluting chemicals listed under the Environmental Quality Standards Directive during works.

Post-construction

6. The licence holder must remove all temporary structures, waste and debris associated with the construction activities within 6 weeks following completion of the final construction activity.

Maintenance

7.—(1) Unless otherwise agreed by the MMO, the licenced activities may not commence until a maintenance plan has been approved in writing by the MMO.

(2) The maintenance plan must be submitted at least 6 weeks prior to the commencement of any maintenance activity, and must include details of the maintenance activities required including location, duration, timings, methodology and materials to be used.

(3) Maintenance activities must be undertaken in accordance with the agreed plan.

SCHEDULE 9

Article 35

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 35 of this Order.

(2) The arbitration will be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Time periods

2.—(1) All time periods in these arbitration rules will be measured in days and this will include weekends, but not bank or public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which is either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs to below unless amended in accordance with paragraph .

(2) Within 14 days of the arbitrator being appointed, the Claimant will provide both the Respondent and the arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, the amount of its claim and/or the remedy it is seeking;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the Claimant’s statements under sub-paragraph by the arbitrator and Respondent, the Respondent will provide the Claimant and the arbitrator with—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;

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- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
 - (c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations of the objections.
- (4) Within 7 days of the Respondent serving its statements under sub-paragraph , the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—
- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
 - (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
 - (c) any expert report in response to the Respondent's submissions;
 - (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent;
 - (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) will be concise. No single pleading will exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 days of receiving the last submission, the arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that he/she will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the arbitrator is to direct a date and venue which he/she considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision will be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(7) There will be no process of examination and cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 28 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held, the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which he/she is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, including the non-mandatory sections, save where modified by these Rules in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales and/or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected/interrelated issues, the arbitrator will consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator will award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

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Confidentiality

7.—(1) The parties agree that any hearings in this arbitration are to take place in private.

(2) The parties and arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 10

Article 2

ENVIRONMENTAL STATEMENT SUPPLEMENTS

<i>Document Title</i>	<i>Date</i>	<i>Examination Reference</i>	<i>Library</i>
Climate Change Chapter Clarification Note	June 2019	REP2-043	
Clarification Note by the Applicant on Glint / Glare Analysis	August 2019	REP3-022	
Missing ALC Records	August 2019	REP4-034	
Clarification Note on Development Chapter Description	July 2019	AS-028 (Appendix E)	
Clarification Note - Removal of Northern Access Route Option	November 2019	AS-048	