
STATUTORY INSTRUMENTS

2022 No. 1396

INFRASTRUCTURE PLANNING

**The Keadby 3 (Carbon Capture Equipped
Gas Fired Generating Station) Order 2022**

Made - - - - 7th December 2022

Coming into force - - 29th December 2022

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

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act. The examination was carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(3). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act.

The Secretary of State has considered the report and recommendations of the Examining Authority, has considered the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(4) and has had regard to the documents and matters referred to in section 104(2)(5) of the 2008 Act.

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

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 149A of the 2008 Act, makes the following Order—

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- (1) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20). Part 7 was amended by S.I. 2017/16.
- (2) S.I. 2009/2264, as amended by S.I. 2012/635 and S.I. 2013/522. There are other amendments to the Regulations which are not relevant to this Order.
- (3) S.I. 2010/103 amended by S.I. 2012/635.
- (4) S.I. 2017/572 amended by S.I. 2018/695, S.I. 2018/942.
- (5) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c. 23) and by section 128(2) and Schedule 13, paragraphs 1 and 49(1) to (6) of the Localism Act 2011 (c. 20).

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and comes into force on 29th December 2022.

Interpretation

2.—(1) In this Order—

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

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

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

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

“the 1990 Act” means the Town and Country Planning Act 1990(10);

“the 1991 Act” means the New Roads and Street Works Act 1991(11);

“the 2008 Act” means the Planning Act 2008(12);

“the 2009 Act” means the Marine and Coastal Access Act 2009(13);

“access and rights of way plans” means the plans of that name identified in Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

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

“AOD” means above ordnance datum;

“AGL” means above ground level;

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

“application guide” means the document of that name identified in the Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the application guide for the purposes of this Order;

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

“book of reference” means the document of that name identified in the table in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

(6) 1961 c. 33.
(7) 1965 c. 56.
(8) 1980 c. 66.
(9) 1981 c. 66.
(10) 1990 c. 8.
(11) 1991 c. 22.
(12) 2008 c. 29.
(13) 2009 c. 23.

“canal” means the Stainforth and Keadby Canal;

“Canal and River Trust” means the body of that name which is a company limited by guarantee (company no. 07807276) and a registered charity (charity commission No 146792) whose registered office is at First Floor, North Station House, 550 Elder Gate, Milton Keynes, MK9 1BB;

“carbon capture and compression plant” means the building and associated works comprised in Work No. 1C and Work No. 7 in Schedule 1 shown on the works plans and which are designed to capture, compress and export to the National Grid Carbon Gathering Network, a minimum rate of 90% of the carbon dioxide emissions of the generating station operating at full load;

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

“combined heat and power assessment” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the combined heat and power assessment for the purposes of this Order;

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

“commercial use” means the export of electricity, and of captured compressed carbon dioxide emissions, from the authorised development on a commercial basis, following the completion of commissioning of the authorised development and the first occupation of the authorised development by the undertaker;

“commissioning” means the process of testing all systems and components of the authorised development (including the carbon capture and compression plant and systems and components which are not yet installed but the installation of which is near to completion) in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions, in relation to the authorised development are to be construed accordingly;

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

“construction working site” means a construction site associated with the works including hard standings, lay down and storage areas for materials, equipment, areas for spoil, areas for vehicle parking, areas for welfare facilities including offices, canteen and washroom facilities, workshop facilities temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“deemed marine licence” means a licence as set out in Schedule 13 and deemed by article 39 to have been granted under Part 4 of the 2009 Act by virtue of section 149A of the 2008 Act;

“design principles” means the document of that name (being Appendix 1 of the design and access statement) identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the design principles for the purposes of this Order;

“Electricity Act” means the Electricity Act 1989(14);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the document of that name identified in Schedule 12 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“flood risk assessment” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“framework construction environmental management plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction environmental management plan for the purposes of this Order;

“framework construction traffic management plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction framework management plan for the purposes of this Order;

“framework construction workers travel plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction workers travel plan for the purposes of this Order;

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

“group company” means in relation to the undertaker company, that company and any company which is from time to time a holding company of that company or a subsidiary or subsidiary undertaking of that company or of such holding company;

“haul road plans” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the haul road plans for the purposes of this Order;

“haul road” means the temporary haul road constructed pursuant to the haul road planning permission (together with such alterations pursuant to Work No. 10a);

“haul road planning permission” means the conditional planning permission with North Lincolnshire Council reference PA/2019/1595, dated 15 November 2019 as varied by planning permission referenced PA/2021/188 dated 1 April 2021, and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act);

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

“indicative landscape and biodiversity plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative landscaping and biodiversity plan for the purposes of this Order;

“indicative landscaping and biodiversity management and enhancement plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative landscaping and biodiversity management and enhancement plan for the purposes of this Order;

“indicative lighting strategy” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative lighting strategy for the purposes of this Order;

“indicative surface water drainage plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative surface water drainage plan for the purposes of this Order;

“land plans” means the plans of that name identified in the table in Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

“licence conditions” means the conditions set out in respect of the deemed marine licence in Schedule 13;

“limits of deviation” means the limits of deviation for each of the works as comprised in the works plans;

“main river” means a watercourse shown as such on the main river map for England and includes any structure or appliance for controlling or regulating the flow of water into or out of the channel which (a) is a structure or appliance situated in the channel or in any part of the bank of the channel; and (b) is not a structure or appliance vested in or controlled by an internal drainage board and “river” shall be construed accordingly;

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

“MMO” means the Marine Management Organisation;

“NGC” means National Grid Carbon Limited (Company Registration Number 03932833) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

“National Grid Carbon Gathering Network” means the proposed network of high pressure carbon dioxide pipelines to be developed by NGC to transport carbon dioxide from power and industrial carbon dioxide emitters to compression facilities for onwards geological storage;

“NGET” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

“NGG” means National Grid Gas plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“Northern Powergrid (Yorkshire) plc” means the company of the same name (Company Registration Number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF;

“Order land” means the land delineated and marked as such on the land plans;

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

“outline written scheme of investigation” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(15);

“permitted preliminary works” means all or any of—

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, and removal of plant, structures and machinery;
- (b) above ground site preparation for temporary facilities for the use of contractors;
- (c) the provision of temporary means of enclosure and site security for construction;
- (d) the temporary display of site notices or advertisements;
- (e) site clearance (including vegetation removal);

(15) 1981 c. 67. Section 7 was amended by the Planning and Compulsory Purchase Act 1991 (c. 34).

“Pilfrey laydown plans” means the document of that name identified in the Schedule 12 (documents and plans to be certified) approved as part of the Pilfrey laydown planning permission and which is certified by the Secretary of State as the Pilfrey laydown plans for the purposes of this Order;

“Pilfrey laydown planning permission” means the conditional planning permission with North Lincolnshire Council reference PA/2018/1950, dated 23 November 2018, and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act);

“Planning Acts” means the Town and Country Planning Act 1947(16), the Town and Country Planning Act 1962(17), the Town and Country Planning Act 1971(18), and the 1990 Act;

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

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

“Requirements” means those matters set out in Schedule 2 (Requirements) and “Requirement” means any one of the Requirements;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

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

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

“street works” means the works listed in article 9(1);

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

“undertaker” means Keadby Generation Limited, company number 02729513, whose registered address is Keadby Power Station Trentside, Keadby, Scunthorpe DN17 3EF;

“watercourse” includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

“works plans” means the plans (which show limits of deviation for each numbered work) of that name identified in Schedule 12 and which are certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access rights of way plans are to be taken to be measured along that work.

(4) Where any definitions in paragraph (1) are duplicated or similar to definitions within the interpretation sections of Schedule 13 (deemed marine licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009/Deemed MMO provisions) then (unless expressly stated otherwise in Schedule 13) defined terms in this article 2 shall not apply to Schedule 13.

(16) 1947 c. 51. This Act was repealed by the Planning (Consequential Provision) Act 1990 (c. 11).

(17) 1962 c. 38. This Act was repealed by the Planning (Consequential Provision) Act 1990.

(18) 1971 c. 78. This Act was repealed by the Planning (Consequential Provision) Act 1990.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in that Schedule and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1E inclusive and the same principle applies to such numbered works that contain letters.

(6) In this Order, the expression “includes” is to be construed without limitation.

(7) In this Order, references to any statutory body include that body’s successor bodies.

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

(9) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the access and rights of way plans.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the Requirements the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work may be situated only within the corresponding numbered area shown on the works plans.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

Operation of authorised development

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

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

Benefit of the Order

6. Subject to article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for:

- (a) Work No. 2A in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGG;
- (b) Work No. 3A in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGET;
- (c) Work No 3B in relation to which the provisions of this Order have effect for the benefit of the undertaker or Northern Powergrid (Yorkshire) Plc; and
- (d) Work No. 7B (and any associated works described in Work No. 7(c)) in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGC.

Consent to transfer benefit of the Order

7.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licence referred to in paragraph (3) below) which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be so agreed in writing between the undertaker and the lessee.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or the lessee.

(3) Subject to paragraph (5), the undertaker may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of the deemed marine licence and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole of any of the deemed marine licence and such related statutory rights as may be so agreed;

except where paragraph (6) applies, in which case no consent of the Secretary of State is required.

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

(5) The Secretary of State must consult the MMO before giving consent to the transfer or grant to a transferee or lessee of the whole of the provisions of the deemed marine licence and such release of statutory rights as may be so agreed.

(6) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is—
 - (i) the holder of a licence under section 6 of the Electricity Act(19);
 - (ii) a gas transporter within the meaning of Part 1 of the Gas Act 1986(20); or
 - (iii) in relation to a transfer or lease of any works within a highway, a highway authority responsible for the highways within the Order land.
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

(19) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27), sections 89, 136, 145 of, and Schedules 19 and 23 to, the Energy Act 2004 (c. 29), paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c. 27), regulation 19 of S.I. 2011/2704 and articles 6 and 21 of S.I. 2012/2400.

(20) 1986 c. 44 (as amended).

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of all such claims that no compensation is payable.

(7) Where the consent of the Secretary of State is not required under paragraph (6), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(8) The notification referred to in paragraph (7) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (9), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (4), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(9) The date specified under paragraph (8)(b) must not be earlier than the expiry of fourteen working days from the date of the receipt of the notice.

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

Application and modification of statutory provisions

8.—(1) The provisions of the Neighbourhood Planning Act 2017(21) insofar as they relate to temporary possession of land under articles 27 (temporary use of land for carrying out the authorised development) and 28 (temporary use of land for maintaining the authorised development) do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) As from the date on which the authorised development (including the permitted preliminary works) is commenced any approval, grant, permission, authorisation or agreement made under the Planning Acts or Electricity Act prior to that date will cease to have effect but only insofar as such approval, grant, permission, authorisation or agreement is inconsistent with the authorised development or anything approved under the Requirements to be carried out within the Order limits.

PART 3

STREETS

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it;

(21) 2017 c. 20.

- (e) construct a bridge over the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d) and (e).

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

(3) Where the undertaker is not the street authority, sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc., of streets

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

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

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

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

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

(5) If within 28 days of receiving an application for approval under paragraph (3) a highway authority fails to notify the undertaker of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Construction and maintenance of new or altered means of access

11.—(1) Those parts of each means of access specified in Schedule 5 (those parts of the access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period (and following an inspection by the highway authority and it being satisfied with the standard of the highway works including for the avoidance of doubt any remedial works carried out by the undertaker) by and at the expense of the highway authority.

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

(3) For the purposes of a defence under paragraph (2), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;

- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

(4) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the undertaker is not by reason of any duty under that section to maintain a street or to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works with regard to which Part 3 of the 1991 Act apply.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised development—

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

(2) If a highway authority fails to notify the undertaker of its decision within 28 days of receiving an application under paragraph (1) or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Agreements with street authorities

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

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (e) the undertaking in the street of any of the works referred to in article 11(1) (construction and maintenance of new or altered means of access); or
- (f) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; or

(ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14.—(1) Subject to paragraphs (3) and (4) and Part 2 of Schedule 10 to this Order (For The Protection Of Canal And River Trust), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(22) (right to communicate with public sewers).

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a consent granted by the Environment Agency.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016(23).

(8) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval as the case may be.

(9) In this article—

(22) 1991 c. 56. This Section was amended by sections 35 and 43(2) of, and paragraph 1 of Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36 and 99 of the Water Act 2003 (c. 37) and paragraph 16 of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(23) S.I. 2016/1154.

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes England and Regulator of Social Housing, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(24) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(25) have the same meaning as in that Act.

Authority to survey and investigate the land

15.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

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

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

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

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

(4) No trial holes are to be made under this article—

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

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Temporary interference with canal and public rights of navigation

16.—(1) The undertaker may in connection with the construction of the authorised development (and subject to Part 2 of Schedule 10 (protective provisions))—

(24) 1964 c. 40.

(25) 1991 c. 57.

- (a) temporarily interfere with the waterway, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;
 - (b) temporarily moor or anchor barges or other vessels or craft in the River Trent or the canal;
 - (c) temporarily close any part of the canal within the Order limits to navigation; and
 - (d) load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials within the Order limits in connection with the construction of the authorised development.
- (2) The power conferred by paragraph (1)(c) must be exercised in a way which secures—
- (a) that no more of the canal is closed to navigation at any time than is necessary in the circumstances; and
 - (b) that if complete closure of a part of the canal to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.
- (3) Any person who, as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private right of navigation is entitled to compensation to be paid by the undertaker to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Use of private roads for construction

17.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with the construction of the authorised works.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) As from the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) This article is subject to article 21 (compulsory acquisition of rights etc.), article 24 (acquisition of subsoil or airspace only), article 27 (temporary use of land for carrying out the authorised development), article 28 (temporary use of land for maintaining the authorised development) and article 32 (Crown rights).

(4) This article does not apply in relation to any right of apparatus to which section 138 of the 2008 Act (extinguishment of right, and removal, of apparatus of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

Statutory authority to override easements and other rights

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

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

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

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

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

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981 and Part 1 of the Land Compensation Act 1961).

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

Compulsory acquisition of rights etc.

21.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating new rights as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 6 (land in which only new rights etc. may be acquired) the undertaker's powers under paragraph (1) are limited to acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights as are specified in column (2) of that Schedule.

(3) In the case of Order land required for Work No. 4A and 4B, the undertaker's powers under paragraph (1) are limited to either plots falling within Work No. 4A or plots falling within Work

No. 4B and following approval by the relevant planning authority of the details for Work No. 4 pursuant to Requirement 5(4) the undertaker shall:

- (a) if Work No. 4A is to be developed, serve written notice on those plots (being plots falling within Work No. 4B) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots; or
- (b) if Works No. 4B is to be developed, serve written notice on those plots (being plots falling within Work No. 4A) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots.

(4) Following approval by the relevant planning authority of the details for Work No. 3B pursuant to Requirement 5(3) the undertaker shall serve written notice on those with interests in plots falling within Work No. 3B which are not required for the approved Work No. 3B confirming the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots and the undertaker's powers in paragraph (1) shall not apply to such plots.

(5) Subject to section 8 of the 1965 Act (other provisions as to divided land), Schedule 2A to the 1965 Act (counter-notice requiring purchase of land not in notice to treat) as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights), and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

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

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

(8) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (7) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(9) This article is subject to article 32 (Crown Rights).

Private rights

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

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

whichever is the earliest.

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

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

whichever is the earlier.

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

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

(6) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land, the acquisition of rights over the land or the creation of rights over the land;
- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it;

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

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.

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

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

Application of the 1981 Act and Part 1 of the 1961 Act

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

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

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

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

(4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

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

(6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute—

“section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.”.

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

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

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

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

“(2) But see article 24(3) (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 which excludes the acquisition of subsoil or airspace only from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965).

(11) Part 1 of the 1961 Act shall apply where pursuant to this Order there arises a dispute as to compensation which is payable pursuant to this Order notwithstanding that such dispute may not relate to compensation for the acquisition of land authorised by this Order.

Acquisition of subsoil or airspace only

24.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraph (1) of article 21 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights over land may be created or acquired under those provisions instead of acquiring the whole of the land.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

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

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 of the 1965 Act (compulsory purchase under Acquisition of Land Act 1946), as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(**26**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022”.

(3) In section 11A(**27**) (powers of entry: further notices of entry)—

- (a) in subsection (1)(a) after “land” insert “under that provision”; and
- (b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022”.

Rights under or over streets

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

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

(a) enter on and take temporary possession of—

- (i) so much of the land specified in column (1) of the table in Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that table; and

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

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

- (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);
 - (b) remove any buildings, fences, debris and vegetation from that land;
 - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
 - (d) construct any works specified in relation to that land in column (2) of the table in Schedule 8 (land of which temporary possession may be taken), or any mitigation works.
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
 - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than twenty-eight days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken; or
 - (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to the land or has otherwise acquired the land subject to temporary possession.
- (5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to the land or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building or debris removed under this article.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).
- (9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).
- (10) Nothing in this article precludes the undertaker from—
- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 6 (new rights) under article 21 (compulsory acquisition of rights etc.); or

(b) acquiring any right in the subsoil of or airspace over any part of the Order land under article 24 (acquisition of subsoil or airspace only) or article 26 (rights under or over streets).

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

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

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8 (land of which temporary possession may be taken).

Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

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

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

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

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory

acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period” means the period of five years beginning with the date which that part of the authorised development is first operational except in respect of any part of the authorised development which is comprised of landscaping where “the maintenance period” means such period as set out in the landscape and biodiversity strategy which is approved by the relevant planning authority pursuant to Requirement 6 of Schedule 2 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

- 29.** Subject to Schedule 10 (protective provisions), the undertaker may—
- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
 - (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under or within the Order land; and
 - (c) create and acquire compulsorily the new rights over land belonging to statutory undertakers within the Order land.

Apparatus and rights of statutory undertakers in streets

30. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of new or altered means of access) or article 12 (access to works) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 10 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

31.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers), any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(28); and

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

PART 6 OPERATIONS

Crown Rights

32.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Nothing in this Order authorises the undertaker or any lessee or licensee to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in section 227 of the 2008 Act) that is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined that section).

(3) A consent under paragraph (1) or paragraph (2) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

Felling or lopping of trees and removal of hedgerows

33.—(1) The undertaker may fell or lop any tree or shrub adjoining the authorised development or cut back its roots, if it reasonably believes it to be necessary to do so, to prevent the tree or shrub from obstructing or interfering with the passage of abnormal indivisible load vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of the authorised development subject to paragraph (2) remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.

(5) The undertaker may not pursuant to paragraph (1) or (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(29).

Protective works to buildings

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

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out of the construction of the authorised development in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised development is first brought into operational use.

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

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

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 44 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the date of completion of the part of the authorised development carried out in the vicinity of the building it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (Compensation in case where no right to claim in nuisance).

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

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

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

PART 7

MISCELLANEOUS AND GENERAL

Protective provision

35. Schedule 10 (protective provisions) has effect.

Restoration works

36.—(1) If the authorised works have not been commenced within the period specified in Requirement 2 the undertaker will within 6 months from the expiry of such period—

- (a) submit to the relevant planning authority for its written approval a scheme for the removal of the haul road, including its road bridges and associated infrastructure and restoration of the land, including the incorporation of biodiversity enhancements and a timetable for implementation; and
- (b) submit to the relevant planning authority for its written approval a scheme for the restoration of the land described in the Palfrey laydown plans to its former condition.

(2) Both schemes shall be implemented by the undertaker as approved and thereafter retained unless agreed otherwise with the relevant planning authority.

Application of landlord and tenant law

37.—(1) This article applies to—

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

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

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

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

Deemed marine licence under the Marine and Coast Access Act 2009

39. The undertaker is deemed to have been granted the licence under Part 4 of the 2009 Act contained in Schedule 13 to this Order, to carry out the works and make deposits described in that licence, and subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

Defence to proceedings in respect of statutory nuisance

40.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽³⁰⁾ (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (b), (c), (d), (e), (fb), (g) or (h) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974⁽³¹⁾; or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Certification of plans etc.

41.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table in Schedule 12 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

⁽³⁰⁾ 1990 c. 43. This section was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

⁽³¹⁾ 1974 c. 40. Words in this section were repealed by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and by section 120(3) of, and paragraph 1 of Schedule 24 to, the Environment Act 1995 (c. 25) and inserted by section 162(1) of, and paragraph 15(3) of Schedule 15 to, that Act.

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

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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

(3) For the purposes of section 7 of the Interpretation Act 1978⁽³²⁾ (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

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

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

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

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

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

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

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

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

(32) 1978 c. 30.

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

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

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Procedure in relation to certain approvals etc.

43.—(1) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 9 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

Arbitration

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

(2) Any matter for which the consent or approval of the Secretary of State or the MMO is required under the provisions of this Order shall not be subject to arbitration pursuant to this article 44 (arbitration).

Guarantees in respect of payment of compensation

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

- (a) a guarantee, the form and amount of which has been approved by the Secretary of State (or a person appointed by the Secretary of State) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security, the form and amount of which has been approved by the Secretary of State (or a person appointed by the Secretary of State) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph.

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 21 (compulsory acquisition of rights etc.);
- (c) article 22 (private rights);
- (d) article 26 (rights under or over streets);
- (e) article 27 (temporary use of land for carrying out the authorised development);
- (f) article 28 (temporary use of land for maintaining the authorised development); and
- (g) article 29 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

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

David Wagstaff
Deputy Director Energy Infrastructure Planning
Department for Business, Energy and Industrial
Strategy

7th December 2022

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the Borough of North Lincolnshire, a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development, comprising—

Work No. 1 – a carbon capture enabled electricity generating station located on land at the Keadby Power Station site, west of Scunthorpe, gas fuelled, and with a gross output capacity of up to 910 megawatts (MWe) at ISO standard reference conditions comprising—

- (a) **Work No. 1A** – a combined cycle gas turbine plant, comprising—
 - (i) a combined cycle gas turbine;
 - (ii) a steam turbine;
 - (iii) gas turbine hall and steam turbine hall;
 - (iv) heat recovery steam generator;
 - (v) gas turbine air intake filters;
 - (vi) emissions stack;
 - (vii) transformers;
 - (viii) deaerator and feed water pump house buildings;
 - (ix) nitrogen oxide emissions control equipment and chemical storage;
 - (x) chemical sampling / dosing plants; and
 - (xi) continuous emissions monitoring system.
- (b) **Work No. 1B** – combined cycle gas turbine plant cooling infrastructure, comprising—
 - (i) hybrid cooling towers;
 - (ii) cooling water pumps, plant and buildings; and
 - (iii) cooling water dosing and sampling plant and buildings
- (c) **Work No. 1C** – carbon dioxide capture plant, comprising—
 - (i) flue gas pre-treatment plant, including cooling and scrubbing plant and flue gas blower;
 - (ii) carbon dioxide absorber unit(s) and associated stack(s);
 - (iii) carbon dioxide stripper and solvent regenerator;
 - (iv) ammonia emissions monitoring and control equipment and associated chemical storage;
 - (v) carbon dioxide conditioning and compression plant; and
 - (vi) ancillary equipment, including air compressors, pumps, heat exchangers, water treatment plant and pipework.
- (d) **Work No. 1D** – natural gas reception facility, comprising—
 - (i) above and below ground valves, flanges and pipework;
 - (ii) gas supply pipeline connection works;
 - (iii) gas receiving area;
 - (iv) gas de-compression equipment and maintenance building and pipeline internal gauge launcher;
 - (v) an above or below ground isolation valve;
 - (vi) gas vents;

- (vii) gas metering, dehydration and pressure reduction equipment;
 - (viii) instrumentation and electrical kiosks(s);
 - (ix) telemetry equipment kiosks(s); and
 - (x) standby generator sockets.
- (e) **Work No. 1E** - generating station supporting uses, comprising—
- (i) administration and control buildings;
 - (ii) raw water storage tank(s);
 - (iii) demineralised water treatment plant, including storage tanks; and
 - (iv) permanent plant laydown area(s) for operation and maintenance activities
- (f) In connection with and in addition to Work Nos. 1A, 1B, 1C, 1D and 1E—
- (i) administration and control buildings;
 - (ii) auxiliary plant, buildings, enclosures and structures;
 - (iii) auxiliary boiler;
 - (iv) emergency diesel generators and banded diesel storage tank(s);
 - (v) chemical storage facilities;
 - (vi) demineralised water treatment plant, including storage tank;
 - (vii) firefighting equipment and building;
 - (viii) fire storage tank(s);
 - (ix) fire water retention basin;
 - (x) gatehouses;
 - (xi) mechanical, electrical, gas, telecommunications and water networks, pipework, pipe runs, cables, racks, infrastructure, instrumentation and utilities including connections between Work Nos 2, 3, 4, 5, 6, 7 and 8, and parts of Work Nos. 1A, 1B, 1C, 1D and 1E;
 - (xii) permanent plant laydown area(s) for operation and maintenance activities;
 - (xiii) waste water treatment facilities; and
 - (xiv) workshop and stores building.

and associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1, comprising—

Work No. 2 – a high pressure gas supply pipeline for the transport of natural gas to Work No. 1, comprising a high pressure steel pipeline of up to 800 millimetres (nominal bore) in diameter and approximately 0.3km in length, including cathodic protection posts and marker posts, running within the Keadby Power Station site between Work No. 1D and Work No. 2B, and above ground installation comprising—

- (a) **Work No. 2A** – a compound for National Grid Gas’s apparatus, comprising—
- (i) an offtake connection from the National Transmission System;
 - (ii) above and below ground valves, flanges and pipework;
 - (iii) an above or below ground remotely operated valve;
 - (iv) an above or below ground remotely operated valve bypass;
 - (v) an above or below ground pressurisation bridle;
 - (vi) instrumentation and electrical kiosks;

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- (vii) pipeline inspection gauge receiving facility; and
- (viii) telemetry equipment kiosks and communications equipment,
- (b) **Work No. 2B** – a compound for the undertaker’s apparatus, comprising—
 - (i) above and below ground valves, flanges and pipework;
 - (ii) an above or below ground isolation valve;
 - (iii) an above or below ground pipeline inline gauge launching facility;
 - (iv) instrumentation and electrical kiosks; and
 - (v) telemetry equipment kiosks and communications equipment,
- (c) in connection with Work Nos. 2A and 2B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, and closed circuit television cameras and columns.

Work No. 3 – electrical connection works for the export and import of electricity to and from national electricity transmission networks and the import of electricity from district electricity transmission networks, comprising—

- (a) **Work No. 3A** – up to 400 kilovolt overground and/or underground electrical cables and control systems cables running from Work No. 1A to the existing National Grid Electricity Transmission substation located west of Chapel Lane, including works within the substation; and
- (b) **Work No. 3B** – up to 132 kilovolt underground electrical cables running from Work No. 1A to the existing Northern Powergrid 132kV substation located at Chapel Lane, including above ground infrastructure works within the substation.

Work No. 4 – water supply connection works to provide cooling and make-up water to Work No. 1, comprising either—

- (a) **Work No. 4A** – underground and/or overground water supply pipeline running between Work No. 1E and the canal including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipeline, plant, buildings, enclosures, intake structures screens and other structures, cable, temporary moorings, temporary repositioning of existing moorings, access works, vehicle parking, screening, lighting, and signage; or
- (b) **Work No. 4B** – works to the existing cooling water supply pipelines running between Works No. 1E and the existing intake structures within the River Trent, including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipelines, plant, enclosures, intake structures, cable placement of material, temporary moorings, installation and repositioning of existing hazard dolphins, access works, screening, lighting, and signage.

Work No. 5 – works to discharge used cooling water and treated wastewater comprising works to the existing cooling water discharge pipeline(s) running from Work No. 1B to the existing outfall structures within the River Trent including, as necessary new, upgraded or replacement pipelines, plant, enclosures, outfall structures and other structures and cable.

Work No. 6 – towns water connection to supply towns water to Work No.1 from the supply point east of Chapel Lane including works to the existing towns water pipelines, replacement and new pipelines, plant, enclosures and structures.

Work No. 7 – a high pressure carbon dioxide pipeline for the export of carbon dioxide from Work No. 1C to the National Grid Carbon Gathering Network and above ground carbon dioxide compression and export infrastructure on land at Keadby Power Station, comprising—

- (a) **Work No. 7A** – compressor station comprising deoxygenation, dehydration, and staged compression facilities, and outlet metering and electrical connection; and

- (b) **Work No. 7B** – National Grid above ground infrastructure compound, comprising export connection to the National Grid Carbon Gathering Network, above and below ground valves, flanges and pipework, above or below ground remotely operated valve, above or below ground remotely operated valve bypass, compression facilities, instrumentation and electrical kiosks, electrical connection, inlet metering and telemetry equipment kiosks and communications equipment;
- (c) in connection with Work Nos. 7A and 7B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, and closed circuit television cameras and columns.

Work No. 8 – new permanent accesses to Work Nos. 1, 2 and 7 comprising—

- (a) **Work No. 8A** – access route comprising the maintenance and improvement of an existing private track running between Work Nos. 1 and 2 including private bridge and the existing junction with the A18 nearby to the west of Pilfrey Farm, comprising surfacing works and signage, and creation of on and off-slips;
- (b) **Work No. 8B** – installation of laybys and gatehouse building nearby to the north of the junction with the A18, barriers, enclosures, drainage and lighting;
- (c) **Work No. 8C** - emergency access route comprising the installation of a bridge crossing of an existing drainage channel, the maintenance and improvement of an existing private track running between Work No. 1 and Chapel Lane, Keadby, surfacing and strengthening works, drainage, enclosures and lighting.

Work No. 9 – temporary construction and laydown areas and temporary and permanent accesses, comprising—

- (a) **Work No. 9A** – temporary construction and laydown areas comprising hard standing, earthworks and levelling, laydown and open storage areas, contractor compounds and construction staff welfare facilities, surface water drainage and gatehouse and weighbridge.
- (b) **Work No. 9B** – the maintenance and improvement of the existing private tracks connecting the existing junctions with the A18 to the west of Pilfrey Farm with Work No. 9A via two existing private bridge crossings of the Hatfield Waste Drain, including the replacement, widening, improvement and maintenance of the westernmost existing private bridge crossing, surfacing, drainage and strengthening works, barriers and enclosures.
- (c) **Work No. 9C** - temporary construction and laydown area in association with the replacement of the private bridge in Work No. 9B, comprising laydown and open storage areas, hard standing, and the placement of mobile cranes.

Work No. 10 – temporary haulage route and waterborne transport offloading facilities on land east of the Keadby Power Station site and at the River Trent comprising—

- (a) **Work No. 10A** – the maintenance and improvement of the existing temporary paved haulage route and ditch crossings and their subsequent removal;
- (b) **Work No. 10B** – the inspection and repair of the existing jetty, and temporary placement of mobile cranes including the temporary oversailing of crane arms above the River Trent; and
- (c) **Work No. 10C** – use of river bed of the River Trent for the mooring of vessels and craft at the waterborne transport offloading area at lower tide.

Work No. 11 – landscaping and planting and boundary treatment comprising—

- (a) **Works 11A** -soft landscaping including planting and biodiversity enhancement measures; and
- (b) **Works 11B** - security fencing, gates, boundary treatment and other means of enclosure;

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In connection with and in addition to Works Nos. 1 to 11, further associated development including—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (b) electrical, gas, potable water supply, foul water drainage and telecommunications infrastructure connections and works, and works to alter the position of such services and utilities connections;
- (c) hard standings and hard landscaping;
- (d) soft landscaping, including bunds, embankments and planting;
- (e) biodiversity enhancement measures;
- (f) fencing, gates, boundary treatment and means of enclosure;
- (g) external lighting, including lighting columns;
- (h) gatehouses and weighbridges;
- (i) closed circuit television cameras and columns and other security measures;
- (j) site establishment and preparation works, including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling and formation of embankments) and excavations; the creation of temporary construction access points; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (k) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (l) vehicle parking and cycle storage facilities;
- (m) accesses, roads and pedestrian and cycle routes;
- (n) tunnelling, boring and drilling works;
- (o) demolition;
- (p) temporary works associated with the maintenance of the authorised development including laydown for outages, contractor facilities, offices and staff welfare facilities; security fencing and gates; external lighting; wheel wash facilities; and signage;
- (q) and, to the extent that it does not form part of such works, further associated development comprising such other works (i) as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) which fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

Article 2

REQUIREMENTS

Interpretation

1. In this schedule—

“bank holiday” means Easter Monday, the first and last Monday in May, 26 December if it is not a Sunday and 27 December or 28 December in a year in which 25 or 26 December is a Sunday;

“Development Consent” means a consent granted pursuant to Sections 114, 115 and 120 of the 2008 Act (as may be amended or replaced from time to time);

“Carbon Dioxide Storage Licence” means any carbon dioxide storage licence required by S17 of the Energy Act 2008 or such other licence, authorisation or consent as may replace it;

“Environment Agency” means the non-departmental public body of that name created by section 1 of the Environment Act 1995;

“Environmental Permit” means a permit granted pursuant to the Environmental Permitting (England and Wales) Regulations 2016 (or any such licence, authorisation or consent as may replace it);

“lead local flood authority” means the body designated as such, for the area in which the authorised development is located, pursuant to section 6(7) of the Flood and Water Management Act 2010;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

“a part” of the authorised development means any part of Works Nos. 1-11;

“relevant internal drainage board” means the Isle of Axholme and North Nottinghamshire Water Level Management Board of Wellington House, Manby Park, Manby, Louth, Lincolnshire;

“shut-down period” means a period after construction works have finished during which activities including changing out of work wear, the departure of workers, post works briefings and closing and securing the site take place;

“start-up period” means a period prior to physical construction works starting for the day during which activities including the opening up of the site, the arrival of workers, changing in to work wear and pre-works briefings take place.

Commencement of the authorised development

2.—(1) The authorised development must not be commenced after the expiration of 7 (seven) years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority fourteen days’ notice of its intention to commence the authorised development.

Notice of commencement and completion of commissioning

3.—(1) Notice of the intended start of commissioning of Work No. 1 must be given to the relevant planning authority where practicable prior to such start and in any event within fourteen days from the date that commissioning is started.

(2) Notice of the intended completion of commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such completion and in any event within seven days from the date that commissioning is completed.

Notice of commencement of commercial use

4. Notice of the intended start of commercial use of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within fourteen days from the date that commercial use is started.

Detailed design

5.—(1) In relation to any part of the authorised development comprised in Work No. 1 no part may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) the height of any stack above ordnance datum which must be at a level at which the environmental effects will be no worse than those identified in chapter 8 of the environmental statement;
- (d) hard standings; and
- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(2) No part of the authorised development comprised in Work No. 2 (gas supply pipeline and above ground installation works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) temporary construction laydown and open storage areas, including contractor compounds;
- (b) temporary construction accesses;
- (c) the route and method of installation of the high-pressure gas supply pipeline and any electrical supply, telemetry and other apparatus;
- (d) the method of connecting the gas supply pipeline to the National Transmission System No. 7 Feeder Eastoft/Keadby Power Station pipeline;
- (e) the approximate number and location of cathodic protection posts and marker posts;
- (f) surface water drainage;
- (g) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (h) hard standings; and
- (i) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities.

(3) No part of the authorised development comprised in Work No. 3 (electricity grid connection works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation of the 400-kilovolt overground and/or underground electrical cables and control system cables running from Work No. 1A to the existing National Grid substation located adjacent to Keadby Power Station;
- (b) the route and method of installation of the underground electrical cables and control system cables running from Work No. 1A to the existing Northern Powergrid substation located at Chapel Lane;
- (c) the connections within the existing National Grid substation, including the overground and/or underground electrical cables, connections to the existing busbars and new, upgraded or replacement equipment; and
- (d) the connections and above ground infrastructure within the existing Northern Powergrid substation, including the underground electrical cables, connections to the existing busbars, step up transformer if required and new, upgraded or replacement equipment or

alternatively a statement confirming that the works within the existing Northern Powergrid substation are not to be developed.

(4) No part of the authorised development comprised in Work No. 4 (cooling and make-up water supply connection works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (and the Canal and River Trust shall be consulted in relation to any details submitted to the relevant planning authority in relation to Works No.4A)—

- (a) written confirmation of whether Work 4A (works to connect to Stainforth and Keadby Canal) or Work 4B (works to connect to River Trent) is to be developed;
- (b) the route and method of construction of the work confirmed pursuant to sub-paragraph (a);
- (c) the method of construction, siting, layout, scale and external appearance of any new, upgraded or replacement intake structures within the waterway, including the screens to be installed to those structures in accordance with the Eel (England and Wales) Regulations 2009⁽³³⁾ and any ancillary plant, buildings, enclosures or structures, angle of flow; and
- (d) the method and timing of installation and removal of any cofferdams at the intake and outfall points, their phasing, and the extent to which each extends into the waterway and shall be consulted in relation to any such works which take place in the Stainforth and Keadby Canal.

(5) No part of the authorised development comprised in Work No. 5 (works to discharge used cooling water and treated wastewater) may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of construction; and
- (b) the method of construction, siting, layout, scale and external appearance of any new, upgraded or replacement intake structures within the waterway, including the screens to be installed to those structures in accordance with the Eel (England and Wales) Regulations 2009 and any ancillary plant, buildings, enclosures or structures.

(6) No part of the authorised development comprised in Work No. 6 (towns water connection works) may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation of the new and replacement towns water connections; and
- (b) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, enclosures and structures.

(7) No part of the authorised development comprised in Work No. 7 (above ground carbon dioxide compression and export infrastructure) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with National Grid Carbon Limited, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (b) the route and method of installation of the high-pressure carbon dioxide export pipeline and any electrical supply, telemetry and other apparatus;
- (c) the method of connecting the carbon dioxide export pipeline to the National Grid Carbon Gathering Network pipeline;
- (d) hard standings;

(33) S.I. 2009/3344.

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- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities;
- (f) external lighting; and
- (g) surface water drainage.

(8) No part of the authorised development comprised in Work No. 8 (new permanent access works to Work No. 1) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority—

- (a) visibility splays and construction specification of the improvement to the A18 junction including strengthening, surfacing, existing and proposed levels, culverts and crossings;
- (b) on- and off- slips, and new and modified highways signage, markings, verges, islands and barriers at the A18;
- (c) details of surfacing and signage works to the private track;
- (d) construction specification, vertical and horizontal levels, and deck, parapet and foundation design of the proposed emergency access bridge crossing of the existing drainage channel;
- (e) surface water drainage;
- (f) means of enclosure, vehicle control barriers, and security; and
- (g) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (h) finished floor levels;
- (i) vehicle loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(9) No part of the authorised development comprised in Work No. 9 (temporary construction and laydown area works and temporary and permanent accesses) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) hard standings, laydown and open storage areas;
- (b) contractor compounds and construction staff welfare facilities;
- (c) details of surfacing, existing and proposed levels, culverts and crossings, barriers and enclosures for the improvements to the private track;
- (d) construction specification, vertical and horizontal levels, and deck, parapet and foundation design of any replacement or improvement of the existing private bridges over the Hatfield Waste Drain;
- (e) gatehouse and weighbridge;
- (f) lighting;
- (g) means of enclosure and security; and
- (h) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(10) No part of the authorised development comprised in Work No. 10 (temporary haulage route and waterborne transport offloading facility works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) construction specification of any maintenance, resurfacing, and improvement works to the temporary haulage route;
- (b) laydown and open storage areas;

- (c) means of enclosure, vehicle control barriers, and security;
 - (d) the siting, maximum vertical and horizontal dimensions, working radius, and maximum oversailing of river bed of the River Trent, of mobile crane(s) to be placed temporarily, and the specifications of inspections and repairs to the jetty that may be carried out in connection with the placing of the cranes; and
 - (e) the internal vehicular access and circulation roads, loading and unloading, and vehicle parking and turning facilities.
- (11) Work Nos. 1 and 8B must be carried out in accordance with the design parameters in Schedule 11 and the design parameters are the “relevant parameters” for the purposes of this Requirement.
- (12) Work Nos 1 and 8B must be carried out in accordance with the design principles statement.
- (13) Work Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 must be carried out and thereafter maintained in accordance with the approved details unless otherwise agreed with the relevant planning authority.

Landscaping and biodiversity protection management and enhancement

6.—(1) No part of the authorised development may commence until a landscaping and biodiversity protection plan for that part has been submitted to and approved by the relevant planning authority (and the Canal and River Trust shall be consulted in relation to any details submitted to the relevant planning authority in relation to coir rolls pursuant to sub-paragraph 2(c)).

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of and a timetable for implementation of—

- (a) further survey work carried out to establish whether any protected species are present on any of the land affected, or likely to be affected, by that part, and, where a protected species is shown to be present, a scheme of protection and mitigation measures;
- (b) measures to protect existing shrub and tree planting that is to be retained; and
- (c) biodiversity and habitat mitigation and impact avoidance including the location and species composition of any coir rolls habitat.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) No part of the authorised development may be commissioned until a landscaping and biodiversity management and enhancement plan that includes a landscape and biodiversity strategy, which specifies maintenance periods, for that part has been submitted to and approved by the relevant planning authority.

(5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—

- (a) implementation and management of all new shrub and tree planting;
- (b) measures to enhance and maintain existing shrub and tree planting that is to be retained;
- (c) measures to enhance biodiversity and habitats within Order Land or land within the Borough of North Lincolnshire that is under the control of the undertaker or other land within the Borough of North Lincolnshire provided it is accompanied by detailed implementation proposals incorporating an implementation timetable;
- (d) an implementation timetable and responsibilities for implementation by third parties where appropriate; and
- (e) annual landscaping and biodiversity management and maintenance.

(6) Any shrub or tree planted within Works Nos. 1-11 as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant

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planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and at least of the size as that originally planted unless otherwise agreed with the relevant planning authority.

(7) The plan submitted and approved pursuant to sub-paragraph (4) must be in accordance with the principles of the indicative landscaping and biodiversity management and enhancement plan and must be accompanied by a statement explaining how any planting proposed adjoining the Order limits has been subject to consultation with Keadby with Althorpe Parish Council along with the regard had to feedback received subject to the principles of the indicative landscaping and biodiversity management and enhancement plan.

(8) The plan must be implemented and maintained as approved during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

External lighting

7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of Requirement 34) has been submitted to and approved by the relevant planning authority and shall thereafter be implemented upon commencement of development and maintained during construction and commissioning.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed (with the exception of the aviation warning lighting required by virtue of Requirement 34) has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this Requirement must be in accordance with the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the construction, commissioning and operation of the authorised development.

(4) The scheme approved pursuant to paragraph (2) must be implemented prior to commercial use and thereafter maintained as approved unless otherwise agreed with the relevant planning authority.

Highway accesses

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays, culverts and crossings, and construction specification) of any new or modified temporary means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details prior to the start of construction of the relevant part of the authorised development (other than the accesses), and reinstated prior to the authorised development being brought into commercial use, unless otherwise agreed with the relevant planning authority.

Means of enclosure

9.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development have, for that part, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development

and such temporary means of enclosure must thereafter be removed in accordance with the details approved pursuant to sub-paragraph (1).

(3) No part of the authorised development may be brought into commercial use until details of any proposed permanent means of enclosure, have, for that part, been submitted to and approved by the relevant planning authority.

(4) No part of the authorised development may be brought into commercial use until the permanent means of enclosure approved pursuant to sub-paragraph (3) have been implemented in full.

(5) The permanent means of enclosure approved pursuant to sub-paragraph (3) must be maintained unless otherwise agreed with the relevant planning authority.

Site security

10.—(1) No part of the authorised development may be brought into use until a written scheme detailing security measures to minimise the risk of crime has, for that part, been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented and maintained throughout the operation of authorised development.

Fire prevention

11.—(1) No part of Work Nos. 1 or 8 may commence until details of the specification and location of accesses for the use of all fire appliances in all of the major building structures and storage areas within the authorised development has, for that part, been submitted to and approved by the relevant planning authority.

(2) The authorised development must be implemented in accordance with the approved details and all relevant accesses must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the authorised development.

Surface water drainage

12.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface water drainage systems, including means of pollution control in accordance with the framework construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface water drainage systems, including a timetable for their implementation, must be submitted to, and after consultation with the lead local flood authority and relevant internal drainage board, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to sub-paragraph (3) of this Requirement must be in accordance with the indicative surface water drainage plan.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Foul water drainage

13.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary foul water drainage systems, including means of pollution control in accordance with the framework construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with Severn Trent Water, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent foul water drainage systems, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency and Severn Trent Water, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Flood risk mitigation

14.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction and the creation of a suitable development platform for the generating station, has been submitted to, and after consultation with the lead local flood authority and approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must provide a minimum finished ground level for Works Nos. 1A and 1C of 2.8m AOD and must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency, Canal and River Trust, lead local flood authority, and the relevant internal drainage board, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to paragraphs (1) and (3) of this Requirement must be in accordance with the flood risk assessment.

(5) The scheme submitted and approved under sub-paragraph (3) must provide for all critical operational infrastructure assets as defined in the flood risk assessment to be elevated to a minimum of 3.60m AOD, and must further provide for the same critical operational infrastructure assets to be elevated to 4.40m AOD where reasonably practicable to do so.

(6) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(7) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to, and after consultation with the lead local flood authority, approved by the relevant planning authority.

(8) The plan approved pursuant to sub-paragraph (7) must be implemented throughout the commissioning and operation of the authorised development unless otherwise agreed with the relevant planning authority.

Contaminated land and groundwater

15.—(1) No part of the authorised development may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the environmental statement and must be included in the construction environmental management plan submitted pursuant to Requirement 17.

(3) The scheme must include a risk assessment, supported by site investigation data, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be implemented and maintained in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

Archaeology

16.—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation with the County archaeologist, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the outline written scheme of investigation.

(3) The scheme must identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect record or preserve any significant archaeological features that may be found.

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

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

Construction environmental management plan

17.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan for that part has been submitted to and, after consultation with Natural England and the Environment Agency, approved by the relevant planning authority.

(2) The plan submitted and approved for that part must be in accordance with the framework construction environment management plan and incorporate—

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (b) a scheme for the control of any emissions to air;
- (c) a soil management plan;
- (d) a site waste management plan;
- (e) a sediment control plan;

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- (f) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions;
- (g) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating to such impacts during the construction of the authorised development;
- (h) the contaminated land scheme for that part containing the matters under Requirement 15; and
- (i) a fish management plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

Protection of highway surfaces

18.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant highways which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

Temporary haul road (traffic management and protection)

19.—(1) The authorised development comprised in Work No. 10A shall be retained and maintained in accordance with the haul road plans.

(2) No part of the authorised development comprised in Work No. 10A shall be brought into use for the purposes of transporting abnormal loads until:

- (a) appropriate traffic management measures have been put in place to allow vehicles to safely access the existing jetty comprised in Work No. 10B and cross Trent Side; and
- (b) appropriate protection measures have been put in place to the Trent Side access points adjacent to the road crossing.

(3) The traffic management and protection measures in (2) shall be in place at times when loads are utilising the haul road, unless otherwise agreed with the relevant planning authority.

Temporary haul road (biodiversity protection)

20.—(1) The authorised development comprised in Work No. 10A shall be carried out in accordance with the biodiversity measures contained in appendices C and D of the framework construction environmental management plan, unless otherwise agreed with the relevant planning authority.

(2) Prior to the completion of the authorised development comprised in Work No. 10A, a report must be submitted to the relevant planning authority by a suitably qualified ecologist confirming conformity with (1).

Temporary haul road (removal and restoration)

21.—(1) No later than 28 days following the completion of commissioning the authorised development comprised in Work No. 10A shall be excavated, dismantled and removed.

(2) No later than three months following the completion of the works authorised in (1) the site shall be restored in accordance with the restoration scheme approved under Requirement 22.

Temporary haul road (prior approval of restoration scheme)

22.—(1) No later than 36 months following commencement of the construction of Work No. 1, a scheme for the removal of the temporary haul road, road bridges and associated infrastructure and restoration of Work No. 10A including the incorporation of biodiversity enhancements and a timetable for implementation, shall be submitted to and approved in writing by the relevant planning authority.

(2) The scheme authorised under (1) must be implemented in full unless otherwise agreed with the relevant planning authority.

Pilfrey laydown (design)

23. The authorised development comprised in Work No. 9A and located within the area described in the Pilfrey laydown plans shall be retained and maintained in accordance with the Pilfrey laydown plans unless otherwise agreed with the relevant planning authority.

Pilfrey laydown (removal and restoration)

24.—(1) The authorised development comprised in Work No. 9A and located within the area described in the Pilfrey laydown plans shall be removed and the land restored to its former condition no later than 3 months following the completion of commissioning in accordance with a scheme of work submitted to and approved by the relevant planning authority.

(2) The scheme authorised under (1) must be implemented in full unless otherwise agreed with the relevant planning authority.

Construction traffic management plan

25.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan has been submitted to and, after consultation with National Highways, the highway authority (and in relation to paragraph (3)(c) below the Canal and River Trust), approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction traffic management plan.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including measures to be taken to use water transport where feasible, agreed routes, and anticipated numbers of abnormal loads to be delivered on each route;
- (c) a wharf management plan. This shall include processes for agreeing in advance the general principles around scheduling of abnormal load deliveries that would temporarily obstruct the entrance to Keadby Lock and notifying the Canal and River Trust as to the timing of

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such deliveries, and measures that seek to avoid such deliveries occurring outside of the notified timings;

- (d) the construction programme; and
- (e) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The approved plan must be implemented within 3 months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Construction worker travel plan

26.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction workers travel plan has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction workers travel plan.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport modes to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction sites; and
- (d) a monitoring and review regime.

(4) The approved plan must be implemented within three months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Construction hours

27.—(1) Construction work relating to the authorised development must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0800 to 1800 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority in accordance with Requirement 28(1);
- (b) are carried out with the prior approval of the relevant planning authority; or

- (c) are associated with an emergency.
- (4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, where this is—
 - (a) associated with an emergency; or
 - (b) carried out with the prior approval of the relevant planning authority.
- (5) Sub-paragraph (1) does not preclude—
 - (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0630 to 0700 and a shut-down period from 1300 to 1330 on a Saturday; or
 - (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.
- (6) In this Requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

Control of noise and vibration - construction

28.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the monitoring and control of noise and vibration during the construction of that part of the authorised development has been submitted to and approved by the relevant planning authority.

- (2) The scheme submitted and approved must specify—
 - (a) each location from which noise is to be monitored;
 - (b) the method of noise measurement;
 - (c) the maximum permitted levels of noise at each monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the relevant planning authority for specific construction activities;
 - (d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and
 - (e) the noise control measures to be employed.

(3) The scheme must be implemented and maintained during the construction of that part of the authorised development as approved unless otherwise agreed with the relevant planning authority.

Control of noise - operation

29.—(1) No part of the authorised development may be brought into commercial use until a scheme for management and monitoring of noise during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must include the results of daytime and night time baseline noise monitoring that has been carried out by the undertaker for the purposes of this requirement as agreed with the relevant planning authority.

(3) Noise (in terms of the BS4142:2014+A1:2019 rating level) from the operation of the authorised development must be no greater than +3dB higher than the defined representative background sound level during each of the daytime and the night time adjacent to the nearest residential properties at such locations as agreed with the relevant planning authority.

(4) The scheme must be implemented and maintained as approved unless in an emergency or otherwise agreed with the relevant planning authority.

(5) Any complaint to the undertaker in relation to operational noise must include contact details for the complainant and the date, time and nature of the noise and must then be:

- (a) acknowledged by the undertaker within 3 working days of receipt of complaint;
 - (b) investigated within 7 working days of the date of acknowledgement referred to in sub-paragraph (a); and
 - (c) a response provided within 7 working days of the date of completion of period for the investigations referred to in sub-paragraph (b) by reference to the threshold in paragraph (3) above.
- (6) In this Requirement—
- (a) “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700; and
 - (b) “defined representative background sound level” means the sound level measured during the monitoring secured by sub-paragraph (2).

Piling and penetrative foundation design

30.—(1) No part of the authorised development comprised within Works Nos. 1, 2, 4A, 4B, 7, 8B or 9B may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment, for that part, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

Restoration of land used temporarily for construction

31.—(1) The authorised development must not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority.

(2) The land must be restored within three years of the authorised development being brought into commercial use (or such other period as the relevant planning authority may approve), in accordance with—

- (a) the restoration scheme approved in accordance with sub-paragraph (1); and
- (b) the landscaping and biodiversity management and enhancement plan approved in accordance with Requirement 6(1).

Combined heat and power

32.—(1) The authorised development must not be brought into commercial use until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.

(2) The undertaker must maintain such space and routes during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the relevant planning authority for its approval a report ('the CHP review') updating the CHP assessment.

(4) The CHP review submitted and approved must—

(a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and

(b) include a list of actions (if any) that the undertaker is reasonably able to take to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review unless otherwise agreed with the relevant planning authority.

(6) On each date during the operation of the authorised development that is five years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

Carbon capture and compression plant

33.—(1) No part of the authorised development may commence, save for the permitted preliminary works and Work No.9B and Work No.9C, until details of the following have been submitted to and approved by the relevant planning authority—

(a) evidence that Development Consent is in place for the construction of the National Grid Carbon Gathering Network;

(b) evidence that a Carbon Dioxide Storage Licence for the intended storage site for the National Grid Carbon Gathering Network is in place;

(c) evidence that an Environmental Permit is in place for Work No. 1; and

(d) evidence of any pipeline works authorisation required by section 14 of the Petroleum Act 1998 for offshore pipeline works.

(2) Prior to the start of commissioning of the authorised development, the undertaker must not without the consent of the Secretary of State—

(a) dispose of any interest in the land required for Work No. 1C or Work No. 7; or

(b) do anything, or allow anything to be done or to occur, which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare Work No. 1C and Work No. 7 for construction.

(3) Work No. 1A may not be brought into commercial use without Work No. 1C and Work No. 7A also being brought into commercial use.

Aviation warning lighting

34.—(1) No part of the authorised development comprised within Work No. 1 or Work No. 10B may commence, save for the permitted preliminary works, until details of the timetable for construction and retention of tall structures or the placement and retention of mobile cranes and the specification and installation timetable for aviation warning lighting for that part during construction and operation have been submitted to and, after consultation with the Civil Aviation Authority and Ministry of Defence Safeguarding, approved by the relevant planning authority.

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

(2) The aviation warning lighting approved pursuant to paragraph (1) must be installed, maintained and operated in accordance with the approved details.

Air safety

35.—(1) No part of the authorised development comprised within Work No. 1 or Work No. 10B may commence, save for the permitted preliminary works, until details of the heights of structures and temporary cranes and other information that is required by Civil Aviation Authority Airspace Regulation and the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

(2) The details approved pursuant to paragraph (1) must thereafter be implemented, operated and maintained in accordance with the approved details.

Local liaison committee

36.—(1) No part of the authorised development may commence, save for the permitted preliminary works and Works Nos. 9B and 9C, until the undertaker has established a committee to liaise with local residents and organisations to keep them informed on matters relating to the construction and commissioning of the authorised development (a ‘local liaison committee’).

(2) The undertaker must invite the relevant planning authority, all parish councils within close proximity to the authorised development, and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison committee.

(3) The undertaker must provide a full secretariat service and supply an appropriate venue (which may include online conferencing with telephone dial in) for the local liaison committee meetings to take place.

(4) The local liaison committee must—

- (a) include representatives of the undertaker;
- (b) meet every other month, starting in the month prior to commencement of the authorised development, until the completion of construction, testing and commissioning works unless otherwise agreed by the majority of the members of the local liaison committee; and
- (c) during the operation of the authorised development meet once a year unless otherwise agreed by the majority of the members of the local liaison committee.

Employment, skills and training plan

37.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote and monitor employment, skills and training development opportunities for residents of the borough of North Lincolnshire during construction and employment opportunities during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed by the relevant planning authority.

Decommissioning

38.—(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan.

(3) The plan submitted and approved must include measures to address any significant environmental effects.

(4) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the plan.

(5) The plan must be implemented and maintained for the duration of the decommissioning of the authorised development as approved unless otherwise agreed with the relevant planning authority.

Requirement for written approval

39. Where under any of the above Requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Approved details and amendments to them

40.—(1) All details submitted for the approval of the relevant planning authority under these Requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 41 (certification of plans etc.).

(2) 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, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

Amendments agreed by the relevant planning authority

41.—(1) Where the words “unless otherwise agreed by the relevant planning authority” appear in the above Requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the Requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

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

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

Table 1

| <i>(1)</i> | <i>(2)</i> | <i>(3)</i> |
|--------------------------------------|--|--|
| <i>Area</i> | <i>Streets subject to street works</i> | <i>Description of the street works</i> |
| In the Borough of North Lincolnshire | A18 | Widening and improvement works to two accesses on the A18 marked at reference points A and C on the access and rights of way plan and re-grading and re-surfacing of carriageway between the points marked E and F on sheet 1 on the access and rights of way plan |
| | Chapel Lane | Works for installation and maintenance of Works No. 3B, 4A, 4B and 5 in those areas marked G, H, I, J, K, L and M on sheet 3 of the access and rights of way plans |

SCHEDULE 4

Articles 10 and 12

STREETS SUBJECT TO PERMANENT ALTERATIONS OF LAYOUT

Table 2

| <i>(1)</i> | <i>(2)</i> | <i>(3)</i> |
|-------------|---|--|
| <i>Area</i> | <i>Streets subject to alternation of layout</i> | <i>Description of alteration</i> |
| | A18 | Widening and improvement works to two accesses on the A18 marked at reference points A and C on the access and rights of way plan and re-grading, re-surfacing and layout alterations of carriageway between the points marked E and F on sheet 1 on the access and rights of way plan |

SCHEDULE 5

Article 11

ACCESS - THOSE PARTS OF THE ACCESS TO
BE MAINTAINED AT THE PUBLIC EXPENSE

Table 3

| <i>(1)</i> | <i>(2)</i> | <i>(3)</i> |
|--------------------------------------|---------------|--|
| <i>Area</i> | <i>Street</i> | <i>Description of relevant part of access</i> |
| In the Borough of North Lincolnshire | A18 | That part of each of the two accesses hatched blue and referenced at points marked A and C on sheet 1 of the access and rights of way plan |

SCHEDULE 6

Article 21

NEW RIGHTS

Interpretation

1. In this Schedule—

“Work Nos. 3A and 3B infrastructure” means any work or development comprised within Work Nos. 3A and 3B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 3A and 3B on the works plans.

“Work Nos. 4A and 4B infrastructure” means any work or development comprised within Work Nos. 4A and 4B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 4A and 4B on the works plans.

“Work No. 5 infrastructure” means any work or development comprised within Work No. 5 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans.

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

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

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

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

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

“Work No. 11A infrastructure planting” means any work or development comprised within Work No. 11A in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 11A on the works plans.

Table 4

| <i>(1)</i> | <i>(2)</i> |
|---|--|
| <i>Number of plot shown on the land plans</i> | <i>Rights etc. which may be acquired</i> |
| 34a, 35, 40a, 41, 42, 43, 44, 45, 55a, 55b, 56, 56a, 59, 60, 64, 65, 66, 69, 70, 73, 86, 88, 94, 106, 107, 108, 109, 110, 166, 167, 168 | For and in connection with the Work Nos. 3A and 3B infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work Nos. 3A and 3B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 3A and 3B infrastructure, or interfere with or obstruct access from and to the Work Nos. 3A and 3B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land. |
| 16, 34a, 35, 36, 52, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, 85, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 103, 105, 113, 114, 115, 116, 117, 118, 122, 123, 126, 137, 138, 139, 148, 150, 151, 159, 160, 164, 165, 166, 168, 169 | For and in connection with the Work Nos. 4A and 4B infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work Nos. 4A and 4B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 4A and 4B infrastructure, or interfere with or obstruct access from and to the Work Nos. 4A and 4B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any |

| <i>(1)</i> | <i>(2)</i> |
|--|--|
| <i>Number of plot shown on the land plans</i> | <i>Rights etc. which may be acquired</i> |
| <p>34a, 35, 69, 70, 73, 82, 83, 84, 85, 87, 89, 90, 99, 102, 103, 105, 111, 112, 113, 114, 115, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, 132, 133, 134, 140, 141, 142, 143, 147, 152, 153, 158, 161, 162, 163, 166, 168, 169, 171</p> | <p>works or uses which alter the surface level, ground cover, or composition of the land.</p> <p>For and in connection with the Work No. 5 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No. 5 infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.</p> |
| <p>34a, 35, 36, 64, 69, 70, 73, 74, 82, 99, 102, 103, 105, 113, 166, 168, 169, 171</p> | <p>For and in connection with the Work No. 6 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No. 6 infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.</p> |
| <p>40, 40a, 41, 44, 45, 55a, 55b, 56, 56a, 57, 60</p> | <p>For and in connection with the Work No. 8C infrastructure the right to improve access roads and for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection</p> |

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

| <i>(1)</i> <i>Number of plot shown on the land plans</i> | <i>(2)</i> <i>Rights etc. which may be acquired</i> |
|---|--|
| 3, 12, 18, 19, 20, 22, 24, 27, 28, 29, 30, 33, 37, 38, 39 | with and the laying, installation, use and maintenance of Work No. 8C infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8C infrastructure, or interfere with or obstruct access from and to the Work No. 8C infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land. |
| | For and in connection with the Work Nos. 8A and 8B the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work Nos. 8A and 8B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 8A and 8B infrastructure, or interfere with or obstruct access from and to the Work Nos.8A and 8B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land. |
| | For and in connection with Work No. 8B planting, a right for the undertaker and all persons authorised on its behalf to enter, pass, and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with and improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 8B planting together with the right to protect, retain, maintain, inspect and replant Work No. 8B, along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and |

| <i>(1)</i> <i>Number of plot shown on the land plans</i> | <i>(2)</i> <i>Rights etc. which may be acquired</i> |
|---|--|
| 3, 19 | to the Work No. 8B planting or existing planting. For and in connection with the Work No 9B infrastructure the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No. 9B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9B infrastructure, or interfere with or obstruct access from and to the Work No. 9B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land. |
| 18, 20, 21 | For and in connection with Work No. 11A infrastructure planting, a right for the undertaker and all persons authorised on its behalf to enter, pass, and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with and improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 11A infrastructure planting together with the right to protect, retain, maintain, inspect and replant Work No. 11A along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the Work No. 11A infrastructure planting or existing planting. |

SCHEDULE 7

Article 21

MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS**Compensation enactments**

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

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973⁽³⁴⁾ has effect subject to the modifications set out in sub-paragraph (2).

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

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

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

(2) In section 5A(5A) (relevant valuation date), omit the words after “if—” and substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 7 to the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022;
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 18 (compulsory acquisition of land) and as modified by article 23 (modification of Part 1 of the 1965 Act), applies to the compulsory acquisition of a right by the creation of a new right under article 21 (compulsory acquisition of rights)—

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

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

(34) 1973 c. 26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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

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

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

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

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

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

(5) Section 11 of the 1965 Act (powers of entry) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 8), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(35) (powers of entry: further notices of entry), 11B(36) (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 are modified correspondingly.

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

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 23(3) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

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

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

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

“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 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.

(2) But see article 24 (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 which excludes the acquisition of subsoil or airspace only from this Schedule.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

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

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

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

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

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

Determination by Upper Tribunal

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

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

11. In making its determination, the Upper Tribunal must take into account-

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

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

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

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 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 8

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 5

| <i>(1)</i> | <i>(2)</i> | <i>(3)</i> |
|---|--|--|
| <i>Number of plots shown on the land plans</i> | <i>Purpose for which temporary possession may be take</i> | <i>Relevant part of the authorised development</i> |
| 47 | Access and construction worksite | Work No. 2A |
| 40b, 43, 56, 58, 59 | Access and construction worksite. | Work No. 3B |
| 32a | Access and construction worksite | Work No. 6 |
| 1, 2, 4, 5, 6, 7, 8, 9, 10, 26 | Access and construction worksite. | Work No. 8A |
| 40b, 55, 56, 58, 59, 67 | Access and construction worksite. | Work No. 8C |
| 1, 2, 3, 4, 10, 11, 12, 16a, 17, 17a, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, 32a, 33, 34, 37, 38, 39, 49, 50a, 50, 51, 61, 62, 63, 72a | Access and construction worksite, use of the land for temporary laydown areas including any ancillary works necessary to facilitate the use of that land, storage, | Work Nos. 9A, 9B and 9C |

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

| (1) | (2) | (3) |
|--|---|--|
| <i>Number of plots shown on the land plans</i> | <i>Purpose for which temporary possession may be take</i> | <i>Relevant part of the authorised development</i> |
| | placing of temporary cranes and works associated with the re-instatement of the land. Works compound and welfare facilities, storage, laydown areas, and re-instatement of laydown areas. | |
| 13, 14, 16, 16a, 17a, 17b, 31, 32a, 46, 47, 48, 49a, 50, 50a, 51, 53, 54, 62, 63, 72, 72a, 73, 74, 78, 79, 93, 95, 101, 119, 131, 135, 136, 144, 145, 165, 165a, 170 | Access and construction worksite, including temporary haul road and any ancillary works necessary to facilitate the use of that land as a temporary haul road and re-instatement of the land. | Work No. 10A |
| 136, 146, 149, 155 | Access, inspection and repair, construction worksite and placing of temporary cranes. | Work No. 10B |
| 68 | Access and construction worksite. | Work No. 11A |

SCHEDULE 9

Article 43

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

1. In this Schedule—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(37);

“requirement consultee” means any body named in a Requirement as a body to be consulted by the relevant planning authority in discharging that Requirement; and

“start date” means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

Applications made under Requirements

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority; or

(37) 1971 c. 80.

- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3,

or such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5 and the exception set out in sub-paragraph 4 below, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) An application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) The relevant planning authority considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and has notified the undertaker of this in writing within 21 business days from receipt of such report,

then the application is deemed to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within ten business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within 21 days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

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

Fees

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012⁽³⁸⁾ (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within nine weeks from the relevant date in paragraph 1 unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2 of this Schedule.

Appeals

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

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (c) the relevant planning authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to paragraph (c);
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and

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

(f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) 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, within five business days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date, but otherwise the process and time limits set out in paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

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

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

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

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

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals and award costs published on 20 December 2016 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

SCHEDULE 10

Article 35

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID
AS ELECTRICITY AND GAS UNDERTAKER**Application**

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order)—

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

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

Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991⁽³⁹⁾;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £100,000,000 (one hundred million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation):

- (a) National Grid Electricity Transmission Plc and National Grid Gas Plc as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker’s liability to National

⁽³⁹⁾ 1991 c. 22.

Grid Electricity Transmission Plc and National Grid Gas Plc to a total liability cap of £100,000,000.00 one hundred million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc and National Grid Gas Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to the National Grid);

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

“apparatus” means:

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

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

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

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

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

“functions” includes powers and duties;

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

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

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

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

“National Grid” means:

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

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

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

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22 and/or activity that is referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”).

On Street Apparatus

3. Except for paragraphs 4 (*Apparatus of National Grid in stopped up streets*), 8 (*retained apparatus: protection*) and 9 (*retained apparatus: protection*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

4.—(1) Where any street is permanently stopped up under this Order, if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to 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 but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway pursuant to Article 13 (*Agreement with street authorities*), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute all such works and things in, upon, or under any such highway as may be reasonable necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 34 (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 and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), 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 that undertaker, 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 this Order, the undertaker may not (a) appropriate or acquire any apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

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

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and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

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

Removal of apparatus

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

(2) If, for the purpose of executing any authorised works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 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 a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

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 of alternative apparatus in substitution for apparatus to be removed,

those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 16 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

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

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

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

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

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

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- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.
- (4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraphs (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
 - (b) must not be unreasonably withheld or delayed.
- (6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, 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) for which protective works are required and National Grid shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1, 2 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).
- (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.
- (12) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Retained apparatus: protection of gas undertaker

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

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

- (a) the exact position of the works;
 - (b) the level at which these are proposed to be constructed or renewed;
 - (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
 - (d) the position of all apparatus;
 - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
 - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.
- (4) Any approval of National Grid required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and,
 - (b) must not be unreasonably withheld.
- (5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If National Grid in accordance with sub-paragraphs (4) or (6) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1, 2 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times.
- (11) At all times when carrying out any works authorised under this Order National Grid must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated

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installation requirements for third parties T/SP/SSW22” and HSE’s “HS(~G)47 Avoiding Danger from underground services”.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 11.

Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
 - (ii) exercising any compulsory purchase powers in this Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works 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, is not determined by arbitration in accordance with paragraph 16 (arbitration) of this Part of this Schedule to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the

existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), 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, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of 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 and properly 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 and including Network Code Claims other than arising from any default of National Grid.

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

(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;
- (b) any authorised works 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 the Order pursuant to section 156 of the 2008 Act or article 7 (consent to

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transfer benefit of the order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 12.

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

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate 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 and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker must not commence construction (and not permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid’s apparatus until the following conditions are satisfied:

- (a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; or
- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

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

Co-operation

14.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9 or 10, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the

interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid 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 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

15. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Save for difference or dispute arising under paragraph 7(2), 7(4), 8(1), 9 and 10 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 44 (arbitration).

Notices

17. Notwithstanding article 42 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part of this Schedule 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 2

FOR THE PROTECTION OF CANAL AND RIVER TRUST

Interpretation

18.—(1) For the protection of the Canal and River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal and River Trust.

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal and River Trust (April 2022) or any updates or amendments thereto;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and “construct” and “constructed” have corresponding meanings;

“Canal and River Trust's network” means the Canal and River Trust's network of waterways;

“detriment” means any damage to the waterway or any other property of the Canal and River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

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- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Canal and River Trust’s network); and
- (g) any interference with the exercise by any person of rights over Canal and River Trust’s network;

“the engineer” means an engineer appointed by the Canal and River Trust for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” is to be construed accordingly;

“protective work” means a work constructed under paragraph 22(3)(a);

“specified work” means so much of Work Nos. 4A, 8A, 9A, 9B, 10B and 11A as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“the waterway” means each and every part of the Stainforth and Keadby Canal within the order limits, and any works, lands or premises belonging to the Canal and River Trust, or under its management or control, and held or used by the Canal and River Trust in connection with that canal in connection with its statutory functions.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply. The undertaker will identify and agree with the Canal and River Trust those parts of the Code of Practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the Code of Practice.

Powers requiring the Canal and River Trust’s consent

19.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal and River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 14 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal and River Trust, save as to surface water discharge which will not require the consent of the Canal and River Trust.

(3) The undertaker must not exercise the powers conferred by article 15 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal and River Trust.

(4) The undertaker must not exercise the powers conferred by this Order to temporarily interfere with the waterway under article 16 (temporary interference with canal and public rights of navigation) so as to divert any right of access to or any right of navigation along the waterway but such right of access may be diverted with the consent of the Canal and River Trust.

(5) The consent of the Canal and River Trust pursuant to sub-paragraphs (1) to (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

Fencing

20. Where so required by the engineer the undertaker must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Survey of waterway

21.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by the Canal and River Trust and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part will apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey must be provided to both the Canal and River Trust and the undertaker at no cost to the Canal and River Trust.

Approval of plans, protective works etc.

22.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal and River Trust proper and sufficient plans of that work, on the Canal and River Trust forms, having regard to the Canal and River Trust’s Code of Practice and such further particulars available to it as the Canal and River Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 35 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal and River Trust the engineer has not

intimated his disapproval of those plans and the grounds of his disapproval he is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal and River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works must be constructed by the undertaker or by the Canal and River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(4) The undertaker must pay to the Canal and River Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal and River Trust under this paragraph.

(5) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal and River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Canal and River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal and River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

23. Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal and River Trust on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of those works; and must have regard to such views as may be expressed by the Canal and River Trust to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on the Canal and River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995⁽⁴⁰⁾ and to the interest of the Canal and River Trust in preserving and enhancing the environment of its waterways.

(40) 1995 c. i.

Notice of works

24. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal and River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal and River Trust's network.

Lighting

25. The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Construction of specified works

26.—(1) Any specified works or protective works must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 22 and paragraph 23 of this Part;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal and River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal and River Trust;
- (e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 14 (Discharge of water); and
- (f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the authorised works).

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal and River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968⁽⁴¹⁾ to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal and River Trust.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal and River Trust and the undertaker must take account of any survey issued pursuant to paragraph 21 and any other information agreed between them pursuant to this Part.

(41) 1968 c. 73. Sections 105(1) and (2) were amended by paragraph 39 of Schedule 2 to S.I. 2012/1659.

Prevention of pollution

27. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work – provision of information

- 28.—(1) The undertaker on being given reasonable notice must—
- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
 - (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.
- (2) The Canal and River Trust on being given reasonable notice must—
- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal and River Trust under this Part during their construction; and
 - (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal and River Trust's reasonable costs in relation to the supply of such information.

Alterations to the waterway

29.—(1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal and River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal and River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal and River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal and River Trust under this paragraph.

Maintenance of works

30. If at any time after the completion of a specified work or a protective work, not being a work vested in the Canal and River Trust, the Canal and River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of the Canal and River Trust's fees, etc.

31.—(1) The undertaker must repay to the Canal and River trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal and River Trust—

- (a) in constructing any protective works under the provisions of paragraph 22(3)(a);

- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;
- (d) in bringing the specified works or any protective works to the notice of users of the Canal and River Trust's network; and
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal and River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal and River Trust to construct and/or carry out any measures.

(2) If the Canal and River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal and River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of twenty-one days—

- (a) provide confirmation to the Canal and River Trust that the estimate is agreed and pay to the Canal and River Trust, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to the Canal and River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) The Canal and River Trust must take in to account any representations made by the undertaker in accordance with this paragraph 31 and must, within twenty-one days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal and River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph 31, do so with a view to being reasonably economic and acting as if the Canal and River Trust were itself to fund the relevant fee, charge, cost or expense.

Making good of detriment; compensation and indemnity, etc.

32.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal and River Trust) must make good such detriment and must pay to the Canal and River Trust all reasonable expenses incurred by the Canal and River Trust, and compensation for any loss sustained by the Canal and River Trust in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to the Canal and River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal and River Trust—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work; and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Canal and River Trust from and against all claims

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and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b) (provided that the Canal and River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

(3) The fact that any act or thing may have been done by the Canal and River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal and River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal and River Trust, its officers, servants, contractors or agents.

(5) The Canal and River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(6) The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £15,000,000 (fifteen million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

Arbitration

33. Any difference arising between the undertaker and the Canal and River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 44 (arbitration) of this Order.

Capitalised sums

34. Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

PART 3

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

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

36. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of a utility undertaker within sub-paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(42)), belonging to or maintained by that utility undertaker;

(42) 1989 c. 29.

- (b) in the case of a utility undertaker within sub-paragraph (b) of the definition of that term, 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 utility undertaker within sub-paragraph (c) of the definition of that term—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility 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 of the Water Industry Act 1991⁽⁴³⁾;
- (d) in the case of a utility undertaker within sub-paragraph (d) of the definition of that term—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) 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 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽⁴⁴⁾;
- (c) water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

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

38. 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.

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

⁽⁴³⁾ 1991 c. 56.

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

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

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

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

40.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

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

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

affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 35 to 40 apply as if the removal of the apparatus had been required by the undertaker under paragraph 39(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

42.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 39(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, that value being calculated after removal.

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

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

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing

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apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 39(2); and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

43.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 39(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

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

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

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

PART 4

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

45.—(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—

“the 2003 Act” means the Communications Act 2003⁽⁴⁵⁾;

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act⁽⁴⁶⁾;

⁽⁴⁵⁾ 2003 c. 21 as amended by the Digital Economy Act 2017 (c. 30).

⁽⁴⁶⁾ Added by Schedule 1 of the Digital Economy Act 2017 (c. 30).

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

“network” means—

- (a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and
- (b) a network which the Secretary of State is providing or proposing to provide;

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

46. The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

47.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the construction of authorised development, 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 make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

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

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 44 (arbitration).

48. 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 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.

49. Nothing in this Part 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 5

FOR THE PROTECTION OF RAILWAY INTERESTS

50. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 68 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

51. In this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

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

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

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

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

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

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

“railway property” means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment.

“regulatory consents” means any consent or approval required under:

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the powers conferred by article 4 (maintenance of the authorised development);

“undertaker” has the same meaning as in article 2 (interpretation) of this Order.

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

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

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

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

- (a) Article 14 (discharge of water);
- (b) Article 15 (authority to survey and investigate the land);
- (c) Article 18 (compulsory acquisition of land);
- (d) Article 19 (statutory authority to override easements and other rights);
- (e) Article 21 (compulsory acquisition of rights);
- (f) Article 22 (private rights);
- (g) Article 24 (acquisition of subsoil or airspace only);
- (h) Article 27 (temporary use of land for carrying out the authorised development);
- (i) Article 28 (temporary use of land for maintaining the authorised development);
- (j) Article 29 (statutory undertakers);
- (k) Article 33 (felling or lopping of trees and removal of hedgerows);
- (l) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (m) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (n) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (o) the powers conferred by section 18 (power to take temporary possession of land) of the Neighbourhood Planning Act 2017

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

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 29 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

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(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

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

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

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

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

55.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 54(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 54;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

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

56. The undertaker must—

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

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

58.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives the undertaker 56 days written notice.

(2) If during the construction of a specified work by the undertaker, Network Rail gives written notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 54(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 59(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 54(3) or in constructing any protective works under the provisions of paragraph 54(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

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- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

60.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 54(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

- (a) The undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 54(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 54(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of

notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in subparagraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) The undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) The undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 55.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 64(1) applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

(10) For the purpose of paragraph 59(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 44 (Arbitration) to a single arbitrator shall be read as a reference to the Institution of Engineering and Technology.

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

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

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

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64.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 31 (recovery of costs of new connections)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) By reason of the construction, maintenance or operation of a specified work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development; and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take all reasonable steps to mitigate any liabilities relating to such claims or demands.

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

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

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

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

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

65. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 64 and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

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

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

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

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

69. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

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

70. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 41 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

71. In relation to any dispute arising under this part of this Schedule (except for those disputes referred to in paragraph 60(11)) the provisions of article 44 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineering and Technology.

PART 6

FOR THE PROTECTION OF NATIONAL GRID CARBON LIMITED

Application

72. For the protection of NGC the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGC.

73. The undertaker hereby agrees not to exercise its powers under this Order without fully complying with the provisions of this Part of this Schedule.

74. Section A and paragraph 88 of Section B of this Part 6 of Schedule 10 shall have effect from the date this Order is made and the remainder of Section B of this Part 6 of Schedule 10 shall have effect from the date that NGC apparatus is installed and completed in accordance with an agreed schedule of NGC apparatus between the undertaker and NGC.

Interpretation

75.—(1) In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991(47);

“affiliates” means any of NGC’s parent or subsidiary undertakings together with any subsidiary undertakings of any such parent undertakings from time to time involved in promoting, constructing or operating the NGC Pipeline Network;

“alternative apparatus” means apparatus in the alternative to NGC apparatus adequate to enable NGC to operate and maintain its undertaking in a manner no less efficient than previously;

“carbon dioxide export connection work” means the infrastructure proposed to deliver the export of carbon dioxide arising from Work No.1C to the NGC Pipeline Network and comprising Work No.7B;

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

“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;

“NGC” means National Grid Carbon Limited (Company Number 03932833) whose registered office is at 1-3 Strand, London, WC2N 5EH and includes all of its affiliates, transferees and assignees;

“NGC apparatus” means any mains, pipes, plant or other apparatus belonging to, operated or maintained by NGC whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for beneficial use by NGC;

“NGC Pipeline Network DCO” means a development consent order for the construction operation and maintenance of the NGC Pipeline Network;

“NGC Pipeline Network” means the proposed network of high pressure carbon dioxide and hydrogen pipelines to be developed by NGC for the transportation of carbon dioxide and hydrogen to and from industrial emitters in the Humber region and references to the NGC Pipeline Network in this Part of this Schedule include any part of that network;

“NGC Pipeline Network site” means land on which any NGC apparatus is situated;

(47) 1991 c. 22.

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

“specified work” means so much of any work or operation authorised by this Order (other than an carbon dioxide export connection work) as—

- (a) will or may be situated over, or within 15 metres measured in any direction of any NGC apparatus; and/or
- (b) may in any way adversely affect any NGC apparatus the removal of which has not been required by the undertaker under paragraph 85 or otherwise.

(2) In paragraph (1), references to “subsidiary undertakings” and “parent undertakings” have the meaning given to them by section 1162 (parent and subsidiary undertakings) of the Companies Act 2006(48), except that references in that section to majority are to be read as references to “25 per cent or more” and provided further that a company will be treated, for the purposes only of the membership requirement contained in that section of that Act, as a member of another company even if its shares in that other company are registered in the name of—

- (a) another person (or its nominee) by way of security or in connection with the taking of security; or
- (b) its nominee.

SECTION A

Interaction with the NGC Pipeline Network

76. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the NGC Pipeline Network. For the purposes of this sub-paragraph, “reasonable endeavours” means—

- (a) undertaking consultation with NGC on detailed design of the carbon capture and compression plant, and all works associated with or ancillary to the carbon capture and compression plant, and ensuring the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the NGC Pipeline Network having regard to such information as NGC notifies to the undertaker;
- (b) having regard to the proposed programme of works for the NGC Pipeline Network as may be made available to the undertaker by NGC and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the carbon capture and compression plant and the NGC Pipeline Network;
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and
- (d) keeping NGC informed on the programme of works for the authorised development.

Carbon dioxide export connections works

77. The undertaker must not except with the agreement of NGC carry out Work No.7B, or any part of it.

78. Without limiting any other provision of this Order, where NGC proceeds to carry out Work No.7B or any part of it, the undertaker must use its reasonable endeavours to facilitate the

(48) 2006 c. 46.

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programming, execution, commissioning and future operation and maintenance of those works in a safe, efficient and economic manner alongside any other part of the authorised development.

79.—(1) Before beginning to construct any carbon dioxide export connection work, or any part of it, the undertaker must submit to NGC plans of the relevant carbon dioxide export connection work (or part of it) and such further particulars available to it as NGC may request within 28 days of receipt of the plans reasonably requested.

(2) Any carbon dioxide export connection work must not be constructed except in accordance with such plans as may be approved in writing by NGC.

80.—(1) Any approval of NGC required under this Schedule—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 92.

(2) NGC must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If NGC require further particulars, such particulars must be requested by NGC no later than 21 days from the submission of plans and thereafter NGC must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

81.—(1) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any carbon dioxide export connection work and notice in writing of its completion not later than 7 days after the date on which it is completed and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of a carbon dioxide export connection work is constructed otherwise than in accordance with paragraph 79(2) above NGC may by notice in writing identify the extent to which the carbon dioxide export connection works does not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 79(2) of this Part of this Schedule or such alternative works as may be agreed with NGC or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (2) 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, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 92.

SECTION B

On street apparatus

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

Acquisition of land

83. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire or extinguish any NGC rights in relation to NGC apparatus, otherwise than by agreement.

Protective works to buildings

84. The undertaker, in the case of the powers conferred by article 34 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any NGC apparatus or any NGC Pipeline Network site.

Removal of NGC apparatus

85.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any NGC apparatus is placed or requires that any NGC apparatus is relocated or diverted, that NGC apparatus must not be removed under this Part of this Schedule, and any right of NGC to maintain that NGC apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NGC in accordance with sub-paragraphs (2) to (4).

(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 NGC apparatus placed in that land, the undertaker must give to NGC 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGC reasonably needs to remove any NGC apparatus) the undertaker must, subject to sub-paragraph (3), afford to NGC 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) 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 NGC and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(4) NGC must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to NGC of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any NGC apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

86.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGC facilities and rights for the construction, commissioning, maintenance and operation of alternative apparatus in substitution for NGC apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and NGC or in default of agreement settled by arbitration in accordance with article 44 (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 NGC than the facilities and rights enjoyed by it in respect of the NGC 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 NGC as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Specified works plan approval

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

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by NGC, or determined under paragraph 92.

(3) Any approval of NGC required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

(4) NGC must use its reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans or receipt of further particulars if such particulars have been requested by NGC for approval.

(5) Without limiting sub-paragraph (3), the requirements which NGC may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works or other works as are reasonably considered by NGC to be necessary to safeguard the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

88.—(1) Subject to sub-paragraph (5), any specified work, and all protective or additional works required by NGC under sub-paragraph 87(5), must be constructed—

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

and NGC will be entitled by its officer to watch and inspect the construction of such works.

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

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

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 92.

Expenses and costs

89.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to NGC all expenses reasonably and properly incurred by NGC in, or in connection with, the inspection, removal, alteration or protection of any NGC apparatus or the construction of the carbon dioxide export connection works or any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 86.

(2) Without prejudice to the generality of sub-paragraph (1), the undertaker must repay to NGC all reasonable costs, charges and expenses which NGC may reasonable incur—

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

(3) This paragraph shall be subject to—

- (a) any contrary provisions made in a charging methodology approved by the Office of Gas and Electricity Markets from time to time (or successor body); or
- (b) such alternative cost apportionment as may be agreed between NGC and the undertaker in a connection agreement (and for the avoidance of doubt the provisions of paragraphs 89(1) and 89(2) are not intended to set a precedent for such cost apportionment terms as may be agreed between the parties) whereupon the relevant parts of paragraph 89 shall be of no further effect insofar as such an agreement remains in force.

Indemnity

90.—(1) Subject to sub-paragraphs (5) to (6), if by reason or in consequence of the construction of the authorised development or in consequence of the construction, use or maintenance of any of the authorised works or of any subsidence resulting from any of those works, or the failure of any such work, any damage is caused to any NGC apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property belonging to NGC, or there is any interruption in the supply of the service provided by NGC, or the efficiency of that supply is impaired in each case directly or in consequence of such construction works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NGC in making good such damage or restoring the supply or making good any impairment of the efficiency of that supply; and

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(b) make reasonable compensation to NGC for any other expenses, loss, damages, liabilities, claims, demands, penalty or costs incurred by it, by reason or in consequence of, any such damage or interruption.

(2) NGC 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 90 applies where it is within NGC'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 NGC's control and if reasonably requested to do so by the undertaker, NGC must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(3) If as a result of the authorised development NGC's access to the NGC Pipeline Network, or to any NGC Pipeline Network site, is materially obstructed, the undertaker must provide such alternative means of access that will allow NGC to maintain NGC apparatus or use NGC apparatus no less efficiently than was possible before the obstruction and such alternative means of access must be provided within 24 hours of the undertaker becoming aware of such obstruction.

(4) The fact that any act or thing may have been done by NGC on behalf of the undertaker or in accordance with a plan approved by NGC or in accordance with any requirement of NGC or under its supervision does not, subject to sub-paragraph (5), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(5) 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 NGC, its officers, servants, contractors or agents.

(6) NGC must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(7) This paragraph shall be subject to any alternative indemnity provisions as may be agreed between NGC and the undertaker in a connection agreement or operating agreement (and for the avoidance of doubt the provisions of paragraph 90 are not intended to set a precedent for such indemnity terms as may be agreed between the parties) whereupon the relevant parts of this paragraph shall be of no further effect.

Co-operation

91. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NGC requires the removal of NGC apparatus under paragraph 85 or NGC specifies requirements for the protection or alteration of apparatus under paragraph 85 the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and the NGC Pipeline Network.

Disputes

92. Any dispute arising between the undertaker and NGC under this part of this Schedule will, if the parties agree, be determined by arbitration under article 44 (arbitration), but will otherwise be determined by the Secretary of State on a reference to it by the undertaker or NGC, after notice in writing by one to the other.

PART 7

FOR THE PROTECTION OF NORTHERN POWERGRID

93. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

94. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991⁽⁴⁹⁾;

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised works” means so much of the works authorised by this Order which affect existing Northern Powergrid’s apparatus within the Order limits;

“functions” includes powers and duties;

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

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid’s undertaking; and

“Northern Powergrid” means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF being a licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989 for the area of the authorised development and in relation to any apparatus belonging to it or maintained by it.

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

96. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

97.—(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 Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid 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 pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 42 days’ advance written notice of that

⁽⁴⁹⁾ 1991 c. 22.

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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 Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours 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 Northern Powergrid to use its compulsory purchase powers to this end unless:

- (a) the undertaker has first used reasonable endeavours to acquire the relevant land, rights and/or interests and provided reasonable evidence of the same to Northern Powergrid in accordance with the measures set out in the plan (in default of agreement, the reasonableness of any such measures to be determined through arbitration under article 44 (arbitration)); and
- (b) the undertaker and Northern Powergrid agree (or in default of agreement, it is determined through arbitration under article 44 (arbitration)) that the promotion of compulsory purchase powers by the undertaker would be significantly more onerous than the exercise of Northern Powergrid's own compulsory powers.

(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 Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration), and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

98.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid 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 Northern Powergrid or in default of agreement settled by arbitration in accordance with article 44 (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 Northern Powergrid 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 Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

99.—(1) Not less than 48 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 (including conducting

any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 97(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

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

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 93 to 98 apply as if the removal of the apparatus had been required by the undertaker under paragraph (2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 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 Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

100.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

- (a) 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 97(2) including without limitation:
 - (i) 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 without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 97(3) all costs reasonably incurred as a result of such action;
 - (ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
 - (iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (iv) the approval of plans;
 - (v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
 - (vi) 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

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consequence of the execution of any such works referred to in this Part of this Schedule); and

- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 97(1) having first decommissioned such apparatus.

(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 and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) 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 44 (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 Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(3) For the purposes of sub-paragraph (2)—

- (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 97(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.

101.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in in paragraph 97(2), or in consequence of the, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works 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 Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid, by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(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 Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid 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.

(4) Northern Powergrid 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 101 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 101 for claims reasonably incurred by Northern Powergrid.

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

103. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 97 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 99, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

104. If in consequence of an agreement reached in accordance with paragraph 96 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

105. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of this Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing

SCHEDULE 11

Requirement 5

DESIGN PARAMETERS

1. Maximum parameters for buildings and structures are set out at table 6.
2. The finished ground level in respect of Work No. 1A, Work No. 1C and Work No. 1E may be higher than 2.8 metres above ordinance datum (AOD) but in all cases the maximum heights measured AOD shall not exceed the measurement in column 5 of table 6.
3. Maximum parameters of the A18 Gatehouse building (Work No. 8B) are set out in table 7.

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4. Maximum parameters for length (m), width (m) or diameter (m) exclude external support structures such as (but not limited to) ladders, platforms, external piping and structural supports.

Table 6

| (1) | (2) | (3) | (4) | (5) |
|---|-------------------|----------------------------------|---|--------------------------------------|
| <i>Component</i> | <i>Length (m)</i> | <i>Width (m) or diameter (m)</i> | <i>Height (m) above ground level (AGL) (in the case that the finished ground level is 2.8m AOD)</i> | <i>Height (M) AOD (in all cases)</i> |
| Gas Turbine Hall (Work No. 1A) | 22 | 50 | 31.8 | 34.6 |
| Steam Turbine Hall (Work No. 1A) | 50 | 40 | 34.8 | 37.6 |
| HRSG Building (Work No. 1A) | 28 | 50 | 55.8 | 58.6 |
| Absorber (Work No. 1C) (in the case that a single absorber is developed) | 16 (Note 4) | 43 (Note 4) | 98.8 | 101.6 |
| Absorber Stack (Work No. 1C) (in the case that a single absorber is developed) | | 6.7 | 104.8 | 107.6 |
| Twin Absorbers (Work No. 1C) (in the case that two absorbers are developed) | | 19.0 (Note 4) | 80 | 82.8 |
| Twin Absorber Stacks (Work No. 1C) (in the case that two absorbers are developed) | | 6.7 | 95.5 | 98.3 |
| HRSG Stack (Work No. 1A) | | 8.0 | 84.8 | 87.6 |
| Carbon Dioxide stripper (Work No. 1C) | | 15.0 (Note 4) | 63 | 65.8 |

Table 7

| <i>(1)</i> | <i>(2)</i> | <i>(3)</i> | <i>(4)</i> | <i>(5)</i> |
|----------------------------------|-------------------|------------------|--|-----------------------|
| <i>Component</i> | <i>Length (m)</i> | <i>Width (m)</i> | <i>Height (m) above ground level (AGL)</i> | <i>Height (m) AOD</i> |
| A18 Gatehouse 6 (Work No. 8B) | | 7 | 4 | 5.5 |

SCHEDULE 12

Article 41

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 8

| <i>(1) Document Name</i> | <i>(2) Document Reference</i> |
|---|-------------------------------|
| Access and rights of way plans | 4.4 |
| Book of reference | 3.1 |
| Land plans | 4.2 |
| Works plans | 4.3 |
| Combined heat and power assessment | 5.7 |
| Environmental statement | 6.0, 10.6-10.9 |
| Design principles statement (appendix 1 of the design and access statement) | 5.6 (appendix 1) |
| Flood risk assessment | 6.3.20 |
| Outline written scheme of investigation | 7.4 |
| Indicative landscape and biodiversity plan | 4.15 |
| Landscaping and Biodiversity Management and Enhancement plan | 5.10 |
| Indicative surface water drainage plan | 4.13 |
| Framework construction environmental management plan | 7.1 |
| Framework construction traffic management plan | 7.2 |
| Framework construction workers travel plan | 7.3 |
| Indicative lighting strategy | 5.11 |
| Haul road plans | 4.19 |
| Pilfrey laydown plans | 4.20 |
| Application guide | 1.2 |

| <i>(1) Document Name</i> | <i>(2) Document Reference</i> |
|--------------------------|-------------------------------|
|--------------------------|-------------------------------|

SCHEDULE 13

Article 39

DEEMED MARINE LICENCE UNDER PART 4 (MARINE LICENSING) OF THE
MARINE AND COASTAL ACCESS ACT 2009 / DEEMED MMO LICENCE PROVISIONS

PART 1

INTRODUCTION

1.—(1) In this licence the definitions in article 2 must apply save where amended—

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

“ABP Humber” means Associated British Ports, Humber Estuary Services located at Port Office, Cleethorpe Road, Grimsby, North East Lincolnshire.

“authorised deposits” means the substances specified in paragraph 2(4) of Part 2 of this licence.

“the authorised development” has the meaning given in paragraph 2(4) of Part 2 of this licence.

“business day” means a day other than a Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971.

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function.

“CEMP” means the construction and environmental management plan.

“commence” for the purposes of this Schedule means the first carrying out of any licensed activities, save for pre-construction surveys approved under this licence and “commenced” and “commencement” shall be construed accordingly.

“condition” means a condition under Part 3 of this licence.

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act.

“licensed activities” means the activities specified in Part 2 of this licence.

“licensable marine activities” means any activity licensable under section 66 of the 2009 Act.

“local enforcement office” means the Marine Management Office (Local Enforcement Office) as further detailed in paragraph 5(b) below.

“maintain” includes inspect, repair, alter, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of an existing structure or asset wholly within its existing three dimensional boundaries and “maintenance” and “maintaining” are to be construed accordingly.

“marine area” has the meaning given to ‘UK marine area’ in section 42 of the 2009 Act.

“Marine Management Organisation” means the body created under the 2009 Act which is responsible for the regulation of this licence or any successor of that function and “MMO” shall be construed accordingly.

“MCA” means the Maritime and Coastguard Agency, the executive agency of the Department for Transport.

“mean high water springs” or “MHWS” means the average of high water heights occurring at the time of spring tides.

“office hours” means the period from 0900 until 1700 on any business day.

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out, whose grid co-ordinates seaward of MHWS are set out in paragraph 6 of Part 2 of this licence.

“river” means the River Trent.

“TH” means the corporation of Trinity House of Deptford Strond.

“undertaker” means the undertaker Keadby Generation Limited (company registration number 02729513), and any agent, contractor or sub-contractor acting on its behalf or any person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order).

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on, under or over water and which is at the time in, on, under or over water, whether or not self-propelled.

(2) A reference to any statute, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar 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);
- (b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purpose of this licence is marine.consents@marinemanagement.org.uk or where contact to the local MMO office is required is beverley@marinemanagement.org.uk.

(5) Unless otherwise stated or agreed with the MMO, all notifications that must be sent by the undertaker to the MMO must be sent using the MMO’s Marine Casement Management System (MCMS) web portal. Except where otherwise notified in writing by the relevant organisation, the addresses for postal correspondence for the purposes of this Schedule are—

(a) Marine Management Organisation (Marine Licensing Team)

Lancaster House,
Hampshire Court,
Newcastle Business Park,
Newcastle Upon Tyne,
NE4 7YH,
Tel: 0300 123 1032;

(b) Marine Management Organisation (Local Enforcement Office)

Beverley office,
Room 13, Ground Floor,
Crosskill House,

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Mill Lane,
Beverley,
HU17 9JB,
Tel: 0208 026 0519;

(c) Trinity House

Tower Hill,
London,
EC3N 4DH,
Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way,
Somerset,
TA1 2DN,
Tel: 01823 337 900;

(e) Maritime and Coastguard Agency (Navigation Safety Branch)

Bay 2/20, Spring Place,
105 Commercial Road,
Southampton,
SO15 1EG,
Tel: 020 3817 2418;

(f) Natural England

Sterling House,
Dix's Field,
Exeter,
EX1 1QA,
Tel: 0300 060 39000;

(g) Historic England

Cannon Bridge House,
25 Dowgate Hill,
London,
EC4R 2YA,
Tel: 020 7973 370;

(h) Centre for Environment, Fisheries and Aquaculture Science ('Cefas')

Pakefield Road,
Lowestoft,
Suffolk,
NR33 0HT,
Tel: 01502 562 244.

PART 2

DETAILS OF LICENSED MARINE ACTIVITIES

2. Subject to the conditions, this licence authorises the undertaker to carry out any licensable marine activities under section 66(1) 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.

3. Licensed activities are authorised in relation to the construction, maintenance and operation of—

- (a) Work No. 4B – River Water Abstraction Option—

Works to the existing cooling water supply pipelines running from Work No. 1E to the existing intake structures within the River Trent, including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipelines, plant, buildings, enclosures, structures and cable;

- (b) Work No. 5 – Water Discharge Corridor—

Works to discharge used cooling water and treated wastewater comprising works to the existing cooling water discharge pipeline(s) running from Work No. 1B to the existing outfall structures within the River Trent, including, as necessary, new, upgraded or replacement pipelines, plant, enclosures, outfall structure, screens and other structures, and cable; and

- (c) any such work, further associated development listed in Schedule 1 ancillary to Work Nos. 4B and 5.

4. The substances or articles authorised for deposit associated with the completion of the construction, maintenance and operational activities described in item 3, sub paragraph (1) (a) and (b) above include—

- (a) Silt, algal growth and biota;
- (b) Stone, rock and concrete;
- (c) Grout and sealant material; and
- (d) any other material of substance to the extent its effects have been considered within the environmental statement.

5. The undertaker may engage in the licensed activities in the area bounded by the coordinates set out in Table 9 in this paragraph to the extent that they fall below MHWS at the time the licensed activities are carried out.

6. The coordinates in Table 9 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

Table 9

| <i>Works No.</i> | <i>Description</i> | <i>Longitude</i> | <i>Latitude</i> |
|------------------|--------------------|------------------|-----------------|
| Works No. 4B | River Water | -0.73879 | 53.59523 |
| | Abstraction Option | -0.73893 | 53.5941 |
| | – Intake Works | -0.73952 | 53.59412 |
| | | -0.73936 | 53.59525 |

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| <i>Works No.</i> | <i>Description</i> | <i>Longitude</i> | <i>Latitude</i> |
|------------------|--|------------------|-----------------|
| | | -0.73891 | 53.59432 |
| | | -0.73886 | 53.59492 |
| | | -0.73891 | 53.59457 |
| Works No. 5 | Water Discharge Corridor – Existing Outfall Option | -0.73769 | 53.59966 |
| | | -0.73732 | 53.60015 |
| | | -0.73702 | 53.60006 |
| | | -0.73709 | 53.6 |
| | | -0.73736 | 53.59997 |
| | | -0.73742 | 53.59989 |
| | | -0.73735 | 53.59978 |
| | | -0.73739 | 53.59973 |
| | | -0.73731 | 53.59968 |
| | | -0.73731 | 53.59964 |
| | | -0.73737 | 53.59957 |

PART 3 CONDITIONS

General

7. Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours of being identified in accordance with the following—

- (a) within office hours: 0300 200 2024;
- (b) outside office hours: 07770 977 825; or
- (c) at all times if other numbers are unavailable: 0845 051 8486 or dispersants@marinemanagement.org.uk.

Notifications and Inspections

8.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 12 and
 - (ii) the masters responsible for the vessels notified to the MMO in accordance with condition 13.

(2) Only those persons and vessels notified to the MMO in accordance with condition 12 and 13 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the licence holder or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.

(6) A notice to mariners must be issued at least 14 days prior to the commencement of the licensed activities or any part of them advising of the start date of those activities and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, TH, MCA and United Kingdom Hydrographic Office within 24 hours of issue.

(7) The undertaker must notify the United Kingdom Hydrographic Office of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO within 24 hours of issue.

Pre-construction

9. Not later than 8 weeks prior to the proposed commencement of licences activities the undertaker must submit to the MCA and the MMO for review and approval in writing by the MMO the CEMP covering the period of construction to include details of—

- (a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;
- (b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised; and
- (c) waste management and disposal arrangements.

The authorised development must be undertaken in accordance with the CEMP, unless otherwise agreed in writing by the MMO.

10.—(1) The undertaker must submit a marine method statement (MMS) to the MMO no later than 8 weeks prior to the proposed commencement of the licensed activities for its written approval. The MMS is to include details of—

- (a) any proposed refurbishment and/or construction activities;
- (b) if a cofferdam is proposed to be constructed as part of Work No. 4B, the cofferdam installation technique and piling methodology;
- (c) any construction works at the intake, including the level or refurbishment or replacement works required;
- (d) an indicative programme for the completion of the licensed activities; and

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- (e) the details of engagement undertaken with ABP Humber, as the appropriate navigational authority. This must include the design of the cofferdam and any measures which will be installed around the toe of the cofferdam to manage risk of shoaling, if necessary. It must also include details of any specification demarcation or lighting requests, as directed by ABP Humber.
 - (2) The licensed activities must not commence until written approval of the MMS is provided by the MMO.
 - (3) All licensed activities must be undertaken in accordance with the approved MMS.
 - (4) The MMS may be amended from time to time subject to the approval in writing of the MMO.
- 11.** The undertaker must complete pre-works bathymetry of the areas specified in Part 2, paragraph 5, before the commencement of works. The results of pre-works bathymetry must be shared with ABP Humber, as the appropriate navigational authority and the MMO.
- 12.** The undertaker must notify the MMO in writing of any agents, contractors or subcontractors that will carry on any licensed activity listed in this licence on behalf of the undertaker this must include the name, address, company number (if applicable) and role. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity and any change to a notified agent, contractor or subcontractors must be updated and notified to the MMO accordingly.
- 13.** The undertaker must notify the MMO in writing of any vessel being used to carry on any licensed activity listed in this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

During Construction, Operation and Maintenance

- 14.** The undertaker must ensure that any coatings and treatments used are suitable for use in the marine area and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency Pollution prevention for businesses guidelines.
- 15.** The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.
- 16.** The undertaker must not discharge waste concrete slurry or wash water from concrete or cement into the river. The undertaker must site concrete and cement mixing and washing areas at least 10 metres from the river or surface water drain to minimise the risk of run off entering the river. If concrete is to be sprayed, suitable protective sheeting must be provided to prevent rebounded or windblown concrete from entering the marine environment. Rebound material must be cleared away before the sheeting is removed.
- 17.** During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.
- 18.—(1)** Vibratory piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where drill or vibratory piling has been unsuccessful. If percussive piling is necessary, soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.
- (2) The soft-start duration must be a period of not less than twenty minutes.
 - (3) Should piling cease for a period greater than ten minutes, then the soft start procedure must be repeated.

19. Piling must not be undertaken between 01 September and 31 November, inclusive, in order to minimize any potential effects on the upstream migration of adult Salmon during their most sensitive migratory period and on wintering birds. Piling will be restricted between 0700 and 1900 hours.

20. The undertaker must comply with the lighting, hazard marking and demarcation requirements of ABP Humber, as the appropriate navigational authority.

21. The undertaker must ensure any rock material used in the construction of the authorised development is from a recognised source, free from contaminants and containing minimal fines.

22. In the event that any rock or stone material is misplaced or lost below MHWS, the undertaker must report the loss to the Local Enforcement Office within 48 hours of becoming aware and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the MMO must notify the undertaker and the undertaker must use reasonable endeavours to locate the material and recover it. In that event, the undertaker must demonstrate to the MMO that reasonable attempts have been made to locate, remove or move any such material.

23.—(1) The undertaker must report all dropped objects to the MMO using the Marine Licence Dropped Incident Report (MLDIR) as soon as reasonably practicable and in any event within 24 hours of becoming aware of an incident.

(2) On receipt of the MLDIR, the MMO may require, acting reasonably, the undertaker to carry out relevant surveys directly related to such MLDIR and where there is a need to remedy any effect related to the MLDIR. The undertaker must carry out surveys at its own expense in accordance with the MMO's reasonable requirements and must report the results of such survey results to the MMO.

(3) On receipt of such survey results the MMO may, acting reasonably, require the undertaker to remove specific obstructions from the riverbed. The undertaker must carry out removal of specific obstructions from the riverbed in accordance with the MMO's reasonable requirements and at its own expense.

Post Construction

24. The undertaker must ensure that any equipment, temporary structures, waste and debris associated with the licensed activities are removed within six weeks of completion of the licensed activity.

25. The undertaker must ensure that the MMO Local Enforcement Office is notified of the completion of the licensed activities and operations within ten days following the completion of the works.

26. The undertaker must complete post-works bathymetry of the areas specified in paragraph 5 of Part 2 of this licence, following the completion of the licensed activities. The results of post-works bathymetry must be shared with ABP Humber, as the appropriate navigational authority and with the MMO.

Conditions Discharge

27. The MMO must determine an application for discharge of a condition as soon as reasonably practicable and in any event within a period of three months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the undertaker (referred to in this Order as the undertaker) to construct, operate and maintain a power generating station and carbon capture and compression plant. The Order permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also grants a deemed marine licence under Part 4 of the Marine and Coast Access Act 2009.

A copy of the Order plans and the book of referenced mentioned in this Order and certified in accordance with Article 41 (certification of plans, etc.) may be inspected free of charge during working hours at Crowle Library, The Market Hall, Market Place, Crowle, North Lincolnshire, DN17 4LA.