

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

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

In the Borough of Boston, Lincolnshire

Work No 1 — Works to construct a power generation facility—

- (a) **Work No. 1A** — an energy recovery facility with a capacity to process up to 1,200,000 tonnes of waste refuse derived fuel per calendar year including—
 - (i) fuel reception and storage facilities consisting of a bale shredding facility, solid fuel storage bunker, cranes and handling equipment;
 - (ii) up to three waste processing lines, each line including a feed hopper, ram feed, air cooled moving grates, a boiler and steam systems, combustion air systems and flue gas treatment facilities including air pollution control residues and reagent storage silos and tanks;
 - (iii) associated induced fans and emissions control monitoring systems per line;
 - (iv) one emission stack per line;
 - (v) dedicated steam turbine connected to each line;
 - (vi) integrated protection system and uninterruptable power supplies;
 - (vii) air cooled condenser array;
 - (viii) connection from exhaust stacks from lines one and three to Work No. 1C for capture of carbon dioxide and return connection for waste exhaust gases; and
 - (ix) conveyors to transfer bottom ash and boiler ash to ash processing facility (Work No. 1B).
- (b) **Work No. 1B** — an ash processing building with a capacity to process up to 200,000 tonnes of bottom ash and boiler ash per calendar year including—
 - (i) ash storage facilities to receive ash from Work No. 1A;
 - (ii) ash processing facilities to prepare ash for transfer to the lightweight aggregates facility (Work No. 2);
 - (iii) ferrous magnet system and storage for separated ferrous material;
 - (iv) solar photovoltaic panels on all or part of Work No.1B building roof including switchgear, inverters, transformers and permanent equipment for maintenance to deliver power to the authorised development; and
 - (v) conveyor system for transfer of processed ash and air pollution control residues to Work No. 2.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (c) **Work No. 1C** — two carbon dioxide processing units, consisting of a carbon dioxide processing unit, storage tanks, vehicle connection points, return connection to stack for lines one and three.

Work No. 2 — Works to construct a lightweight aggregate manufacturing facility with a capacity to process up to 300,000 tonnes of aggregate per calendar year including—

- (a) storage silo facilities for lightweight aggregate processing lines;
- (b) four processing lines; each line including a feed hopper, mixer units, trefoil kiln, and flue gas treatment facilities including air pollution control residues and reagent storage silos and tanks;
- (c) associated induced fans and emissions control monitoring systems per line;
- (d) two filter banks and two emission stacks;
- (e) storage silos for storing manufactured lightweight aggregate pellets; and
- (f) sealed storage pits, drainage and sump facilities for storing up to 190,000 tonnes of imported clay per calendar year, and up to 10,000 tonnes of sediment dredged from The Haven during maintenance dredging activities per calendar year for use in the lightweight aggregates manufacturing process.

Work No. 3 — Works to construct an electrical substation—

- (a) **Work No. 3A** — on-site below ground trenches, ducting and jointing pits; and above ground structures including switchgear, and transformer, busbar sections, integrated protection scheme and uninterruptable power supplies; connection from power generation turbine facility (Work No 1A); and
- (b) **Work No. 3B** — construction of a new pylon; and connection to 132kV pylon for export of power from the power generation facility (Work No. 1A); and incoming connection point from the grid.

Work No. 4 — Works to construct a wharf facility with a capacity to receive up to 1,200,000 tonnes of waste refuse derived fuel and imported clay and sediment, and export up to 300,000 tonnes lightweight aggregates per calendar year including—

- (a) 400m long wharf structure forming 7.2m AOD. flood defence line containing up to three berthing points and scour protection;
- (b) cranes and refuse derived fuel bale handling equipment;
- (c) two conveyor lines (both partially open for loading, then covered sections) to transfer waste refuse derived fuel bales to Works No. 1A, including thermal cameras;
- (d) wharf ramp structure;
- (e) bale contingency storage area;
- (f) re-baling facility;
- (g) bale quarantine area;
- (h) conveyor and handling equipment for loading ships with manufactured aggregate;
- (i) shore to ship power facility; and
- (j) storage areas for mobile plant equipment, including mobile cranes and forklift trucks.

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

- (a) diesel storage tanks;
- (b) process effluent storage tank;
- (c) demineralised water treatment plant;
- (d) fire water tank(s), pump room(s) and fire protection facilities;

- (e) control rooms;
- (f) administration block(s) including welfare facilities;
- (g) distributed control system;
- (h) workshop(s) and associated stores;
- (i) machinery storage facilities;
- (j) security gatehouses and barriers;
- (k) weighbridges;
- (l) heavy goods vehicle holding area;
- (m) storage for on-site mobile equipment;
- (n) external fuel container storage area;
- (o) visitor centre;
- (p) 33kv transformers to distribute power from Work No. 3; and
- (q) emergency stand-by generator(s).

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

- (a) pipework (including flow/return pipework), cables, telecommunications, other services and associated infrastructure;
- (b) site drainage, waste management, water, wastewater, other services and associated infrastructure;
- (c) new or alteration to accesses, a vehicular access road and internal vehicular access road, vehicle turning, waiting and parking areas and site pedestrian access routes;
- (d) a footbridge on Boston Public Footpath 14 between OSGR TF3374542872 to OSGR TF3400742238 and OSGR TF3400742238 to OSGR TF3417242188 to allow safe pedestrian passage over certain site roads; and
- (e) operational vehicle parking.

Work No. 7 — Works to construct temporary construction compounds including—

- (a) hard standing;
- (b) vehicle parking;
- (c) office accommodation block(s) and welfare facilities;
- (d) new or alteration to accesses;
- (e) concrete batching plant, generators, aggregates storage area and temporary aggregates conveyor from the wharf to the concrete batching plant; and
- (f) construction areas.

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

- (a) lighting infrastructure, including perimeter lighting columns;
- (b) fencing, boundary treatment and other means of enclosure;
- (c) signage;
- (d) CCTV and other security apparatus;
- (e) surface and foul water drainage facilities;
- (f) potable water supply;
- (g) new telecommunications and utilities apparatus and connections;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (h) hard and soft landscaping;
 - (i) biodiversity enhancement measures and environmental mitigation measures;
 - (j) works permanently to alter the position of existing telecommunications and utilities apparatus and connections;
 - (k) works for the protection of buildings and land; and
 - (l) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections,
- and such other buildings, structures, works or operations, and modifications to, or demolition of, any existing buildings, structures or works as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1, but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2

Article 2

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

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

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

“Defra” means the Department for Environment, Food and Rural Affairs;

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

“heavy commercial vehicle” has the meaning given by section 138 (meaning of “heavy commercial vehicle”) of the 1984 Act⁽¹⁾;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

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

(1) 1984 c. 27.

“wharf outage” means circumstances caused by factors beyond the undertaker’s control in which waste, clay or sediment has not or could not be received at Work No. 4 for a period in excess of four consecutive days.

(2) References in this Schedule to part of the authorised development are to be construed as references to stages, phases or elements of the authorised development in respect of which an application is made by the undertaker under this Schedule, and references to commencement of part of the authorised development in this Schedule are to be construed accordingly.

(3) References to details or schemes approved under this Schedule are to be construed as references to details or schemes approved in relation to a specified part of the authorised development, as the case may be.

Time limits

2.—(1) The authorised development must commence within 5 years of the date on which this Order is made.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authorities one month’s notice of its intention to commence the authorised development.

Detailed design approval

3.—(1) The authorised development must be designed in detail and carried out in accordance with the design principles contained in the design and access statement and the preliminary scheme design shown on the indicative generating station plans and indicative wharf plans, unless otherwise agreed in writing by the relevant planning authority, following consultation with the Environment Agency to the extent that it relates to matters relevant to its function, provided that the relevant planning authority is satisfied that any amendments to those documents showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the relevant planning authority under subparagraph (1), those details are deemed to be substituted for the corresponding indicative generating station plans and indicative wharf plans the undertaker must make those amended details available in electronic form for inspection by members of the public. The amended details must be implemented as approved.

Detailed design (appearance)

4.—(1) In relation to any part of the authorised development comprised in Work Nos. 1, 2, 3, 4 and 5 no development of that part may commence until details of the external appearance, including the colour, materials and surface finishes, of all new permanent buildings and structures have been submitted to and approved by the relevant planning authority.

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

Parameters of authorised development

5. The elements of the authorised development listed in column (1) of the table below (design parameters) must not exceed the maximum dimensions and levels and, where applicable, the minimum dimensions, set out in relation to that element in columns (3) to (6) of that table.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(1) <i>Element of authorised development</i>	(2) <i>Work No.</i>	(3) <i>Maximum length (metres)</i>	(4) <i>Maximum width (metres)</i>	(5) <i>Maximum height (metres) from ground level unless stated</i>	(6) <i>Minimum height (metres) from ground level unless stated</i>
Main energy recovery facility buildings (3 No. units, dimensions per unit)	1A	105	35	44	–
Energy recovery stacks (3 No.)	1A(a)(iv)	–	–	80	80
Turbine building	1A(a)(v)	53	40	20	–
Air cooled condenser array	1A(a)(vii)	65	45	30	–
Ash processing building	1B	70	30	32	–
Carbon dioxide recovery building	1C	30	20	12	–
Lightweight aggregates main building	2	75	40	44	–
Lightweight aggregates storage silos	2(a), 2(e)	6	6	25	–
Lightweight aggregates stacks (2 No.)	2(d)	–	–	80	80
Electrical substation	3	95	35	–	–
Wharf structure	4(a)	400	–	–	7.2 (AOD)
Supporting buildings and facilities (control room, visitor centre, workshops)	5	40	20	15	–

Landscape and ecological mitigation strategy

6.—(1) No part of the authorised development may commence until a landscape and ecological mitigation strategy for that part has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency, the relevant statutory nature conservation body, Lincolnshire Wildlife Trust and the Royal Society for the Protection of Birds.

(2) The relevant planning authority's approval of the landscape and ecological mitigation strategy is restricted to those parts of the strategy that relate to the parts of the authorised development that are above MHWS, with the remainder the strategy approved by the MMO under condition 18 of Schedule 9 (deemed marine licence).

(3) The landscape and ecological mitigation strategy approved under sub-paragraph (1) must be substantially in accordance with the outline landscape and ecological mitigation strategy.

(4) The landscape and ecological mitigation strategy approved under sub-paragraph (1) must include details of—

- (a) mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the construction of the authorised development;
- (b) mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the operation of the authorised development;
- (c) the results of the Defra biodiversity off-setting metric together with the off-setting value required, the nature of such off-setting and evidence that the off-setting value provides for the required biodiversity compensation, risk factors (including temporal lag) and long term management and monitoring;
- (d) the site or sites on which the compensation off-setting required pursuant to (c) will be provided together with evidence demonstrating that the site or sites has/have been chosen in accordance with the prioritisation set out in the outline landscape and ecological mitigation strategy;
- (e) certified copies of the completed legal agreements securing the site or sites identified in (d) to enable enactment of the biodiversity off-setting scheme and the biodiversity off-setting management and monitoring plan as approved in the landscape and ecological mitigation strategy;
- (f) any hard and soft landscaping to be incorporated within Work Nos. 1, 2, 3, 4, 5 and 6 including location, number, species, size of any planting and the management and maintenance regime for such landscaping; and
- (g) an air quality deposition monitoring plan that must be substantially in accordance with the outline air quality deposition monitoring plan and must include the final numbers and locations of deposition monitoring locations, as agreed with the relevant statutory nature conservation body and the Environment Agency.

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

Archaeology

7.—(1) No part of Work Nos. 1, 2, 3, 4, 5 and 6 may commence until for that part a written scheme of investigation, reflecting the relevant mitigation measures set out in the outline written scheme of investigation has been submitted to and approved by the relevant planning authority, following consultation with Historic England.

(2) The scheme approved under sub-paragraph (1) must—

- (a) identify areas where field work or a watching brief are required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found; and
- (b) detail the measures for post-field work processing, assessment analysis and reporting of the results of archaeological work and the deposition of the archive.

(3) Works Nos. 1, 2, 3, 4, 5 and 6 must be carried out in accordance with the scheme referred to in sub-paragraph (1), unless otherwise agreed by the relevant planning authority.

Highway access

8.—(1) No part of Work No. 7 may commence until written details of the siting, design and layout of any new temporary means of access to a highway in that part, or any alteration to an existing means

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

of access to a highway in that part has been submitted to and approved by the relevant planning authority, following consultation with the relevant highway authority.

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

(3) The undertaker must not exercise the power in article 14(1) (permanent stopping up of streets) unless and until a plan showing the layout for the termination of the street (as specified in columns (1) and (2) of Schedule 6) has been submitted to and approved by the relevant planning authority.

Surface and foul water drainage

9.—(1) No part of the authorised development may commence until for that part a surface and foul water drainage strategy has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency, lead local flood authority, Anglian Water Services Limited and relevant internal drainage board to the extent that it relates to matters relevant to their functions.

(2) The strategy submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline surface and foul water drainage strategy.

(3) The surface and foul water drainage strategy must be implemented as approved under sub-paragraph (1) and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Contamination

10.—(1) No part of the authorised development may commence until—

(a) intrusive ground investigations have been carried out for the purpose of assessing ground conditions; and

(b) a scheme to deal with the contamination of land, including groundwater, and ground gases which are likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and approved by the relevant planning authority.

(2) 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.

(3) With respect to ground gases, the risk assessment required under sub-paragraph (2) must adopt the source-pathway-receptor principle to identify plausible contaminant linkages and take into account potential migration of off-site ground gases.

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

(5) Should any remediation be required a verification report demonstrating the completion of works set out in the approved scheme and the effectiveness of the remediation must be submitted to, and approved, by the relevant planning authority prior to the date of final commissioning.

(6) The verification report submitted for approval under sub-paragraph (5) must include results of sampling and monitoring carried out in accordance with the remediation strategy to demonstrate that the site remediation criteria have been met along with any long-term post-remediation monitoring requirements.

Code of construction practice

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

following consultation with the Environment Agency and the relevant statutory nature conservation body to the extent that it relates to matters relevant to their functions.

(2) The code of construction practice submitted for approval must be substantially in accordance with the outline code of construction practice to the extent that it is applicable to that part and must reflect the mitigation measures set out in the register of environmental actions and commitments.

(3) The code of construction practice submitted under sub-paragraph (1) must include the following—

- (a) the construction and phasing programme;
- (b) liaison procedures;
- (c) complaints procedures;
- (d) an air quality and dust management plan detailing air quality and dust monitoring and management measures during construction that must be substantially in accordance with the outline air quality and dust management plan;
- (e) construction noise and vibration monitoring and management plan;
- (f) a site waste management plan detailing sustainable site waste management measures;
- (g) a soil management plan detailing measures to ensure the temporary storage of soils and other material of value will be in accordance with best practice;
- (h) details of screening and fencing to be installed during construction;
- (i) a materials management plan detailing measures to ensure the safe storage of excavated materials during construction;
- (j) a pollution prevention and incident response plan detailing measures to prevent and control the spillage of oil, chemicals and other potentially harmful liquids;
- (k) a health and safety plan, including details of how health and safety risks are to be identified and managed during construction;
- (l) a surface and foul water drainage plan including measures for the protection of surface and groundwater during construction;
- (m) an artificial light emissions management plan;
- (n) measures to ensure the restoration of site following completion of construction; and
- (o) appropriate procedures to address any unexploded ordnance that may be encountered.

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

Construction hours

12.—(1) Construction works relating to the authorised development must not take place on Sundays, bank holidays nor otherwise outside the hours of 0800 to 2000 hours on Monday to Saturday (with the option of 0700 to 1900).

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

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

(3) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

opinion of the undertaker would outweigh the adverse effects to the public (whether individual classes or generally as the case may be) of taking that action.

Construction traffic management plan

13.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority, following consultation with the relevant highway authority, Boston Borough Council and the relevant statutory nature conservation body in relation to any proposals under sub-paragraph (2) (d) only.

(2) A construction traffic management plan must be substantially in accordance with the outline construction traffic management plan and must include the following (as applicable for the part of the authorised development to which the construction traffic management plan relates)—

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

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

(4) The construction traffic management plan submitted pursuant to sub-paragraphs (1) and (2) that relates to Work Nos. 1, 2, 3, 4, 5, 6 and 7 must be accompanied by a pre-condition highway survey (as defined in the outline construction traffic management plan).

(5) The construction traffic management plan and any updated construction traffic management plan submitted following any review under sub-paragraph (2)(h) must be implemented as approved by the relevant planning authority.

Flood risk emergency plan

14.—(1) No part of the authorised development may commence until a flood risk emergency plan has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency, Black Sluice Internal Drainage Board and the Lead Local Flood Authority.

(2) The flood risk emergency plan must include—

- (a) procedures to receive flood warnings (including communication lines to cover shift patterns and / or staff leave), and closure of or evacuation of the authorised development

with sufficient lead time to ensure no personnel or vehicles are left within the Order limits during times of a flood warning; and

(b) identification of areas of emergency refuge to be located above the modelled breach flood depths.

(3) The flood risk emergency plan must be implemented as approved by the relevant planning authority.

Phasing of construction and commissioning of Work Nos. 1 and 2

15.—(1) Subject to sub-paragraph (2), no part of the authorised development may commence until a phasing programme setting out the commencement of construction and the anticipated start of commissioning and the anticipated date of final commissioning for each of Work Nos. 1 and 2 has been submitted to and approved by the relevant planning authority.

(2) The phasing programme must provide for the anticipated date of final commissioning of Work Nos. 1 and 2 as soon as reasonably practicable. The phasing programme must be implemented as approved by the relevant planning authority.

Operational lighting scheme

16.—(1) Prior to the commissioning of any part of Work Nos. 1, 2, 3, 4 and 5 a written scheme for the management and mitigation of operational external artificial light emissions for that part must be submitted to and approved by the relevant planning authority.

(2) The written scheme must be substantially in accordance with the outline lighting strategy.

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

Operational vehicle movements

17.—(1) Except in the event of a wharf outage, the number of two-way heavy commercial vehicle movements must not exceed a maximum of 30 two-way vehicle movements per day except in circumstances where, following consultation with the relevant highway authority and Boston Borough Council, the relevant planning authority is satisfied that additional vehicle movements would not give rise to any materially new or materially different highway safety impacts or environmental effects in comparison with those reported in the environmental statement.

(2) Waste must not be delivered by road to Work No. 1A except in the event of a wharf outage or in circumstances where, following consultation with the relevant highway authority and Boston Borough Council, the relevant planning authority is satisfied that such delivery of waste by road would not give rise to any materially new or materially different highway safety impacts or environmental effects in comparison with those reported in the environmental statement.

(3) Clay and sediment must not be delivered by road to Work No. 2 or lightweight aggregates exported by road from Work No. 2 except in the event of a wharf outage or in circumstances where, following consultation with the relevant highway authority and Boston Borough Council, the relevant planning authority is satisfied that such delivery or export by road would not give rise to any materially new or materially different highway safety impacts or environmental effects in comparison with those reported in the environmental statement.

(4) Prior to the date of final commissioning, an operational traffic management plan for that part must be submitted to and approved by the relevant planning authority, following consultation with the relevant highway authority and Boston Borough Council.

(5) The operational traffic management plan must include—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) an operational worker travel plan that includes measures to encourage the use of sustainable modes of transport by employees;
 - (b) measures to manage the routing and number of heavy commercial vehicles during operation;
 - (c) measures to manage the routing and number of heavy commercial vehicles in the event of a wharf outage;
 - (d) provision as to the responsibility for, and timescales of, the implementation of those measures; and
 - (e) a monitoring and review regime.
- (6) The operational traffic plan must be implemented as approved under sub-paragraph (4).

Waste hierarchy scheme

18.—(1) Prior to the commissioning of any part of Work No. 1A, the undertaker must submit to the relevant planning authority for approval a scheme, which sets out arrangements for maintenance of the waste hierarchy in priority order and which aims to minimise recyclable and reusable waste received at the authorised development during the commissioning and operational period of the authorised development (the “waste hierarchy scheme”).

- (2) The waste hierarchy scheme must include details of—
- (a) the type of information that must be collected and retained on the sources of the residual waste after recyclable and reusable waste has been removed;
 - (b) the arrangements that must be put in place for ensuring that as much reusable and recyclable waste as is reasonably possible is removed from waste to be received at the authorised development, including contractual measures to encourage as much reusable and recyclable waste being removed as far as possible;
 - (c) the arrangements that must be put in place for ensuring that commercial suppliers of residual waste operate a written environmental management system which includes establishing a baseline for recyclable and reusable waste removed from residual waste and specific targets for improving the percentage of such removed reusable and recyclable waste;
 - (d) the arrangements that must be put in place for suspending and/or discontinuing supply arrangements from commercial suppliers who fail to retain or comply with any environmental management systems;
 - (e) the arrangements that must be put in place for the provision of an annual waste composition analysis undertaken by the undertaker, with the findings submitted to the relevant planning authority within one month of the sampling being undertaken; and
 - (f) the form of records that must be kept for the purpose of demonstrating compliance with (a) to (e) and the arrangements in place for allowing inspection of such records by the relevant planning authority.
- (3) The waste hierarchy scheme must be implemented as approved under sub-paragraph (1).

Control of operational noise

19.—(1) Prior to commissioning of any part of Works Nos. 1, 2, 3 and 4 a written noise monitoring scheme must be submitted to and approved by the relevant planning authority, such scheme must specify—

- (a) each location from which noise is to be measured;

- (b) the method of noise measurement, which must be in accordance with British Standard 4142:2014 +A1:2019;
 - (c) the maximum permitted levels of noise at each agreed monitoring location which must not exceed the defined limits to demonstrate compliance with government and local policy on noise;
 - (d) provision requiring the undertaker to take noise measurements as soon as possible following a reasonable request by the relevant planning authority and to submit the measurements to the relevant planning authority as soon as they are available; and
 - (e) a definition of the circumstances that constitute an emergency for the purposes of sub-paragraphs (2)(a), (3) and (5).
- (2) The level of noise at each monitoring location must not exceed the maximum permitted level specified for that location in the scheme, except—
- (a) in the case of an emergency (as defined in the noise monitoring scheme);
 - (b) with the prior approval of the relevant planning authority; or
 - (c) as a result of steam purging or the operation of emergency pressure relief valves or similar equipment of which the undertaker has given notice in accordance with sub-paragraph (3).
- (3) Except in the case of an emergency, the undertaker must give the relevant planning authority 48 hours' notice of any proposed steam purging or operation of emergency pressure relief valves or similar equipment.
- (4) So far as reasonably practicable, steam purging and the operation of emergency pressure relief valves or similar equipment may only take place—
- (a) between 0900 and 1700 hours on weekdays (excluding bank holidays); and
 - (b) between 0900 and 1300 hours on Saturdays (excluding bank holidays).
- (5) Where the level of noise at a monitoring location exceeds the maximum permitted level specified for that location in the approved scheme because of an emergency—
- (a) the undertaker must, as soon as possible and in any event within two business days of the beginning of the emergency, submit to the relevant planning authority a statement detailing—
 - (i) the nature of the emergency;
 - (ii) why it is necessary for the level of noise to have exceeded the maximum permitted level;
 - (b) if the undertaker expects the emergency to last for more than 24 hours, it must inform local residents and businesses affected by the level of noise at that location of—
 - (i) the reasons for the emergency; and
 - (ii) how long it expects the emergency to last.

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

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

(2) Within seven days of completing final commissioning of Work No. 1A, the undertaker must provide the relevant planning authorities with notice of the date upon which such commissioning was duly completed.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Combined heat and power

21.—(1) On the date that is 12 months after the date of final commissioning for Work No. 1A, the undertaker must submit to the relevant planning authority for its approval, following consultation with Boston Borough Council, a report (“the CHP review”) updating the combined heat and power assessment.

(2) The CHP review submitted and approved must—

- (a) consider whether opportunities reasonably exist for the export of heat from numbered Work 1A; and
- (b) include a list of actions (if any) that the undertaker is reasonably required to take (without material additional cost to the undertaker) to increase the potential for the export of heat from Work No. 1A.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.

(4) On each date during the operation of Work No. 1A 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, a revised CHP review must be submitted to and approved by the relevant planning authority, following consultation with Boston Borough Council.

(5) Sub-paragraphs (2) and (3) apply in relation to a revised CHP review submitted under sub-paragraph (4) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (1).

Decommissioning

22.—(1) Within 24 months of the permanent cessation of the operation of Work Nos. 1 and 2 details of a scheme for the restoration and aftercare of the land for Work Nos. 1, 2, 3, 4 (excluding any parts of Work No. 4 that are covered by the decommissioning scheme approved under the deemed marine licence), 5 and 6 must be submitted to and approved by the relevant planning authority.

(2) The scheme must include details of structures and buildings to be demolished or retained, details of the means of removal of materials following demolition, phasing of demolition and removal, details of restoration works and phasing thereof.

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

Amendments to approved details

23.—(1) With respect to the documents certified under article 47 (certification of documents, etc.), the parameters specified in the table in paragraph 5 of this Schedule and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together “Approved Documents, Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval, following consultation by the undertaker with Lincolnshire County Council, any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority in accordance with this paragraph.

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

Electricity generation cap

24.—(1) The authorised development must not generate more than 300 megawatts unless otherwise agreed by the relevant planning authority provided that the relevant planning authority is satisfied, following consultation with the relevant statutory nature conservation body to the extent that it relates to matters relevant to its functions, that any increase would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) The undertaker must keep records for the purpose of demonstrating compliance with sub-paragraph (1) and must submit them to the relevant planning authority on an annual basis.

(3) On receipt of a written request to view the records by the relevant planning authority these records must be made available for inspection within seven days of such a request.

(4) References in Schedule 1 (authorised development) to 300 megawatts are to be construed as references to any electricity cap approved under sub-paragraph (1).

Tonnage caps

25.—(1) The total amount of—

- (a) waste derived fuel received at Work No. 1A and Work No. 4 must not exceed 1,200,000 tonnes per calendar year;
- (b) bottom ash and boiler ash processed at Work No. 1B must not exceed 200,000 tonnes per calendar year; and
- (c) aggregate to be processed at Work No. 2 and received at Work No. 4 must not exceed 300,000 tonnes per calendar year,

unless otherwise agreed by the relevant planning authority provided that the relevant planning authority is satisfied, following consultation with the relevant statutory nature conservation body to the extent that it relates to matters relevant to its functions, that any increase would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) The undertaker must keep records for the purpose of demonstrating compliance with sub-paragraph (1) and must submit them to the relevant planning authority on an annual basis.

(3) On receipt of a written request to view the records by the relevant planning authority these records must be made available for inspection within seven days of such a request.

(4) References in Schedule 1 (authorised development) to any tonnage amount are to be construed as references to any tonnage amount approved under sub-paragraph (1).

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under Part 1

26.—(1) Where an application has been made to a relevant planning authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with—

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 27 (further information); or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), 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 taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) In determining any application made to the relevant planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the relevant planning authority may—

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

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

Further information

27.—(1) In relation to any part of an application made under this Schedule, the relevant planning authority has the right to request such further information from the undertaker as it considers necessary to enable it to consider the application.

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

(3) If the requirement concerned contained in Part 1 of this Schedule specifies that consultation with a consultee is required, the relevant planning authority must issue the consultation to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the relevant planning authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Fees

28.—(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(2) (as may be amended or replaced from time to time A) 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 the decision period as determined under paragraph 26(1),

unless 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.

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

Register of requirements

29.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the relevant planning authority.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the relevant planning authority has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Appeals to the Secretary of State

30.—(1) The undertaker may appeal to the Secretary of State if—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by—
 - (i) a requirement and any document referred to in any requirement in Part 1 of this Schedule; or
 - (ii) any other consent, agreement or approval required under this Order, or grants it subject to conditions to which the undertaker objects;
- (b) the relevant authority does not give notice of its decision to the undertaker within the period specified in paragraph 26(1) or grants it subject to conditions;
- (c) having received a request for further information under paragraph 27(1) 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;
- (d) having received any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application; or
- (e) the relevant planning authority issues a notice further to sections 60 or 61 of the Control of Pollution Act 1974(3).

(2) The appeal process applicable under sub-paragraph (1) is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the decision period as determined under paragraph 26;
- (b) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide (“the appeal documents”);
- (c) the undertaker must on the same day provide copies of the appeal documents to the relevant planning authority and the requirement consultee (if applicable);
- (d) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent;
- (e) the relevant planning authority and the requirement consultee (if applicable) must submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the

(3) 1974 c. 40.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

appeal parties are notified of the appointment of the appointed person 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;

- (f) the appeal parties must make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to sub-paragraph (e); and
- (g) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(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 as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(4) Any further information required under sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

(7) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant 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 the appointed person in the first instance.

(8) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

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

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

(11) Any consent, agreement or approval given by the appointed person pursuant to this paragraph is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the relevant planning authority.

(12) 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.

(13) Except where a direction is given under sub-paragraph (14) requiring some or all of the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(14) On application by the relevant authority or undertaker, the appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(15) In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is to be made, the appointed person must have regard to the relevant Planning

Practice Guidance published by the Ministry for Housing, Communities and Local Government or such guidance as may from time to time replace it.

Anticipatory steps towards compliance with any requirement

31. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

Interpretation of Part 2 of Schedule 2

32. In Part 2 of Schedule 2—

“the appeal parties” means the relevant planning authority, the requirement consultee and the undertaker;

“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⁽⁴⁾; and

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant authority in discharging that requirement.

SCHEDULE 3

Article 10

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Authority</i>	<i>(2)</i> <i>Streets subject to street works</i>
Lincolnshire County Council	Nursery Road (private road)
	Callen Road (private road)
	Bittern Way (private road)

⁽⁴⁾ 1971 c. 80.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 4

Article 12

STREETS SUBJECT TO ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
Bittern Way (private road)	Secure site exit for HGV only – left turn only (works forming part of Work No. 5(j)) between points A and B on the access and rights of way plan.
New section of public footpath from Boston Public Footpath 14/4 to Boston Public Footpath 14/11	A new section of footpath (110m approximately) from a point approximately 200 m from the point marked ST1 (OSGR TF3374542872) on the access and rights of way plan which would join BOST/14/11.

PART 2

TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
Marsh Lane	Works for the provision of temporary accesses (works forming part of Work No. 7) at the point marked Construction Access Point 2 on the access and rights of way plan.

SCHEDULE 5

Article 13

TEMPORARY CLOSURE, ALTERATION, DIVERSION AND RESTRICTION OF THE USE OF STREETS

<i>(1)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(2)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
Boston Public Footpath 14	Length of footpath to be temporarily closed between the points marked TC2 (OSGR TF3400742238) to TC3 (OSGR TF3417242188) on the access and rights of way

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>(1)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(2)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
	plan to install and facilitate the construction of Work No. 6(d).
Boston Public Footpath 14	Length of footpath to be temporarily closed between the points marked TC1 (OSGR TF3374542872) to TC2 (OSGR TF3400742238) on the access and rights of way plan to install and facilitate the construction of Work No. 6(d).

SCHEDULE 6

Article 14

PERMANENT STOPPING UP OF STREETS AND PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
Boston Public Footpath 14/4	Footpath to be stopped up between a point approximately 200 m from the point marked ST1 (OSGR TF3374542872) to ST3 (OSGR TF3411942384) on the access and rights of way plan.
Boston Public Footpath 14	Footpath to be stopped up between the points marked ST3 (OSGR TF3411942384) to ST4 (OSGR TF3400742238) on the access and rights of way plan.
Boston Public Footpath 14	Footpath to be stopped up between the points marked ST3 (OSGR TF3411942384) to ST2 (OSGR TF3417242188) on the access and rights of way plan.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 7

Article 33

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) Number of plot shown on land plan and Crown land plan	(2) Purpose for which temporary possession may be taken
3	Temporary use to facilitate construction for Work No. 7 and other development necessary for the authorised development that takes place within the Order limits.

SCHEDULE 8

Article 45

PROTECTIVE PROVISIONS

PART 1

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

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

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989⁽⁵⁾), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽⁶⁾ for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991⁽⁷⁾; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)⁽⁸⁾ (adoption of sewers and disposal works) of that Act or an

⁽⁵⁾ 1989 c. 29.

⁽⁶⁾ 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

⁽⁷⁾ 1991 c. 56.

⁽⁸⁾ Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c. 21).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at a future date) of that Act,

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

“functions” includes powers and duties;

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

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

“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;
- (c) a 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.

On street apparatus

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

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 14 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

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

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Acquisition of land

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

Removal of apparatus

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

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan 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 must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(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 49 (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 49 (arbitration), and after the grant to the utility undertaker 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 apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(7) If the utility undertaker in question fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.

(8) For the avoidance of doubt, any such “deemed consent” under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

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

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

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

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

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

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

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

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

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole 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.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or 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 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 undertaker,

(c) by reason or in consequence of any such damage or interruption.

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

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

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker 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.

Cooperation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(9);

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(10);

“electronic communications code network” means—

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

(9) 2003 c. 21.

(10) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) an electronic communications network which the undertaker is providing or proposing to provide;

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

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

16. The exercise of the powers conferred by article 35 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) to the electronic communications code.

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
(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 reasonable 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 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.

(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 49 (arbitration).

(5) This Part of this Schedule does not apply to—

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

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

PART 3

FOR THE PROTECTION OF HIGHWAYS AND TRAFFIC UNDERTAKERS

18.—(1) The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority.

(2) In this Part of this Schedule—

“highway” means any highway of which the relevant highway authority is the highway authority;

“plans” includes sections, designs, drawings, specifications, soil reports, staging proposals, programmes, calculations, methods of construction, risk assessments and details of the extent, timing and duration of any proposed occupation of any highway and “approved plans” means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this Part of this Schedule;

“property of the relevant highway authority” means any apparatus or street furniture of the relevant highway authority affixed to or placed under any highway; and

“the relevant highway authority” means the highway authority for the area in which the highway to which the provisions of this Part of this Schedule is situated.

(3) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of the relevant highway authority, that approval or consent must be in writing and subject to such reasonable terms and conditions as the relevant highway authority may require.

(4) In exercising the powers conferred by this Order in relation to any highway the undertaker must have regard to the potential disruption of traffic which may be caused and must seek to minimise such disruption so far as is reasonably practicable.

(5) The undertaker must not, without the consent of the relevant highway authority, construct any part of the works authorised by this Order under and within 50 metres of the surface of any highway which comprises a carriageway except in accordance with plans submitted to, and approved by, the relevant highway authority; and if within 28 days after such plans have been submitted the relevant highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.

(6) In the construction of any part of the said works under a highway no part of it shall, except with the consent of the relevant highway authority, be so constructed as to interfere with the provision of proper means of drainage of the surface of the highway or be nearer than two metres to the surface of the highway.

(7) The undertaker must not under the powers conferred by or under this Order without the consent of the relevant highway authority, acquire or enter upon, take or use whether temporarily or permanently or acquire any new rights over any part of any highway, including subsoil beneath the surface of any highway.

19.—(1) Before commencing the construction of, or the carrying out of any work which involves interference with a highway, the undertaker must submit to the relevant highway authority for its approval plans, drawings and particulars (in this paragraph referred to as “plans”) relating thereto, and the works must not be carried out except in accordance with the plans submitted to, and approved by, the relevant highway authority.

(2) If within 28 days after the plans have been submitted the highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.

(3) Any officer of the relevant highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the works authorised by this Order which—

(a) is in, over or under any highway, or

(b) which may affect any highway or any property of the relevant highway authority,

during the carrying out of the work, and the undertaker must give to such officer all reasonable facilities for such inspection and, if the officer is of the opinion that the construction of the work is attended with danger to any highway or to any property of the relevant highway authority on or

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

20.—(1) The undertaker must not alter, disturb or in any way interfere with any property of the relevant highway authority on or under any highway, or the access thereto, without the consent of the relevant highway authority, and any alteration, diversion, replacement or reconstruction of any such property which may be necessary may be made by the relevant highway authority or the undertaker as the relevant highway authority thinks fit, and the expense reasonably incurred by the relevant highway authority in so doing must be repaid to the relevant highway authority by the undertaker.

(2) If within 28 days after a request for consent has been submitted the relevant highway authority has not given or refused such consent, it is deemed to have consented to the request as submitted.

21. The undertaker must not remove any soil or material from any highway except so much as must be excavated in the carrying out of the works authorised by this Order.

22.—(1) If the relevant highway authority, after giving to the undertaker not less than 28 days' notice (or, in case of emergency, such notice as is reasonably practicable) of its intention to do so, incurs any additional expense in the signposting of traffic diversions, in the diversion of footpaths, in the taking of other measures in relation thereto, or in the repair of any highway by reason of the diversion thereto of traffic from a road of a higher standard, in consequence of the construction of the works authorised by this Order, the undertaker must repay to the relevant highway authority the amount of any such expense reasonably so incurred.

(2) An amount which apart from this sub-paragraph would be payable to the relevant highway authority by virtue of this paragraph in respect of the repair of any highway must, if the highway fell or would have fallen due for repair as part of the maintenance programme of the relevant highway authority at any time within ten years of the repair being carried out by the undertaker, so as to confer on the relevant highway authority financial benefit (whether by securing the completion of overdue maintenance work for which the relevant highway authority is liable or by deferment of the time for such work in the ordinary course), be reduced by the amount which represents that benefit.

23.—(1) The undertaker shall not, except with the consent of the relevant highway authority, deposit any soil or materials, or stand any plant, on or over any highway so as to obstruct or render less safe the use of the highway by any person, or, except with the like consent, deposit any soil or materials on any highway outside a hoarding, but if within 28 days after request for it any such consent is neither given nor refused it is deemed to have been given.

(2) The expense reasonably incurred by the relevant highway authority in removing any soil or materials deposited on any highway in contravention of this paragraph must be repaid to the relevant highway authority by the undertaker.

24. The undertaker must not, except with the consent of the relevant highway authority, erect or retain on or over a highway to which the public continues to have access any scaffolding or other structure which obstructs the highway.

25. The undertaker must, if reasonably so required by the relevant highway authority, provide and maintain to the reasonable satisfaction of the relevant highway authority, during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the works authorised by this Order, temporary bridges and temporary ramps for vehicular or pedestrian traffic over any part of the works or in such other position as may be necessary to prevent undue interference with the flow of traffic in the highway.

26.—(1) Where any part of any highway has been broken up or disturbed by the undertaker and not permanently stopped up or diverted, the undertaker must make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of the relevant highway authority,

and must maintain the same to the reasonable satisfaction of the relevant highway authority for such time as may reasonably be required for the permanent reinstatement of the highway.

(2) The reinstatement of that part of the highway must be carried out by the undertaker to the reasonable satisfaction of the relevant highway authority in accordance with such requirements as to specification of material and standards of workmanship as may be prescribed for equivalent reinstatement work by regulations made under section 71 of the New Roads and Street Works Act 1991(11).

27. If any damage to any highway or any property of the relevant highway authority on or under any highway is caused by, or results from, the construction of any work authorised by this Order or any order or omission of the undertaker, its contractors, agents or employees whilst engaged upon such work, the undertaker may, in the case of damage to a highway, make good such damage to the reasonable satisfaction of the relevant highway authority and, where the undertaker does not make good, or in the case of damage to property of the relevant highway authority, the undertaker must make compensation to the relevant highway authority.

28. The fact that any act or thing may have been done in accordance with plans approved by the relevant highway authority does not (if it was not attributable to the act, neglect or default of the relevant highway authority or of any person in its employ or its contractors or agents) exonerate the undertaker from any liability, or affect any claim for damages, under this Part or otherwise.

29. Any difference arising between the undertaker and the relevant highway authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article 49 (arbitration).

PART 4

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

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

31. In this Part of this Schedule—

“the Agency” means the Environment Agency;

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

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

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

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

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

“Roman Bank” means the sea defence known as the Roman Bank as shown on the Roman Bank plan;

(11) 1991 c. 22.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“Roman Bank plan” means the plan titled “Roman Bank within the Order limits” certified by the Secretary of State as the Roman Bank plan for the purposes of this Order under article 47 (certification of documents, etc.);

“sea defence” means any bank, wall, embankment (and any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency’s area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949(12) or by any local authority or any navigation, harbour or conservancy authority;

“specified work” means so much of any work or operation authorised by this Order or otherwise as is for the purpose of or in connection with, the construction or maintenance of the authorised development—

- (a) in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—
 - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
 - (ii) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
 - (iii) cause obstruction to the free passage of fish or damage to any fishery;
 - (iv) affect the conservation, distribution or use of water resources; or
 - (v) affect the conservation value of the main river and habitats in its immediate vicinity;
- (b) in, on, under, over or within 16 metres of the base of a sea defence which is likely to—
 - (i) endanger the stability of, cause damage to or reduce the effectiveness of that defence; or
 - (ii) interfere with the Agency’s access to or along that defence;
- (c) an activity that includes any dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting;
- (d) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work; and

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

Submission and approval of plans

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

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 42.

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

- (a) must not be unreasonably withheld or delayed;

(12) 1949 c. 74.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval;
 - (c) in the case of a refusal, accompanied by a statement of the grounds of refusal; and
 - (d) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.
- (4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

Construction of protective works

33. Without limiting paragraph 32, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

by reason of any specified work.

Timing of works and service of notices

34.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 33, must be constructed—

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

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

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

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

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

(5) Subject to sub-paragraph (6) and paragraph 39, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation,

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 41.

Maintenance of drainage works

35.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the Applicant for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to sub-paragraph (4) and paragraph 39, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is reasonably necessary for such compliance and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency 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 41.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

Impairment of drainage works

36. Subject to paragraph 39, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in so doing from the undertaker.

Agency access

37. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction as soon as reasonably practicable and within 24 hours of the undertaker becoming aware of such obstruction unless a longer period of time has been agreed in writing by the Agency.

Free passage of fish

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

(2) If by reason of—

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

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

(3) Subject to paragraph 39, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(4) Subject to paragraph 39, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any reasonable expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

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

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

Indemnity

40.—(1) The undertaker is responsible for and indemnifies the Agency for all costs and direct losses which may be reasonably incurred or suffered by the Agency by reason of—

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised works or dealing with any failure of the authorised works,

except in so far as such costs or losses in relation to the operation or maintenance of the authorised works are properly covered and payable under separate agreement made between the Agency and the undertaker.

- (2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes reasonably incurred—

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

“losses” includes physical damage.

(3) The undertaker must indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

- (4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
- (b) any interest element of sums claims or demanded;

“liabilities” includes—

- (a) contractual liabilities;
- (b) tortious liabilities (including liabilities for negligence or nuisance);
- (c) liabilities to pay statutory compensation or for breach of statutory duty;
- (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(6) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, will not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

Disputes

41. Any dispute arising between the undertaker and the Agency under this part of this Schedule must, if the parties agree, be determined by arbitration under article 49 (arbitration), but will otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

Roman Bank

42.—(1) The undertaker must at its own cost engage the services of a suitably experienced chartered civil engineer to carry out an initial condition survey of the Roman Bank prior to carrying

out the authorised development in, on, under, over or within 16 metres of the base of the Roman Bank.

(2) The inspection must be undertaken on foot with information recorded on both sides of the bank as well as the crest.

43. The undertaker must at its own cost engage the services of a suitably qualified surveyor to carry out a topographical survey of the parts of the Roman Bank within the Order limits to establish the continuous height of the Roman Bank prior to carrying out any authorised development in, on, under, over or within 16 metres of the base of the Roman Bank.

44. The initial condition survey in accordance with paragraph 42 must report on—

- (a) the height of the Roman Bank (based on the topographical survey undertaken under paragraph 43);
- (b) the structural condition of the Roman Bank including taking measurements and recording the location of any existing defects, such as cracks, holes, slumping burrows, scour; and
- (c) a photographic record of the inspection of the Roman Bank identifying the above elements using geo-referenced photographs or marked on maps with grid references.

45. The undertaker must provide to the Agency a copy of—

- (a) the initial condition survey; and
- (b) the topographical survey,

as soon as reasonably practicable following the undertaker's receipt of those documents.

46. The undertaker at its own costs will inspect, maintain and repair Roman Bank subject to the provisions in paragraph 47.

47. In respect of the Roman Bank only, this Part of Schedule 8 applies subject to the following variations—

(a) the definition of “specified work” in paragraph 31(b) is to be read as—

“Prior to carrying out any works in, on, under, over or within 16 metres of the base of the Roman Bank which is likely to—

- (i) endanger the stability of, cause damage to or reduce the effectiveness of the Roman Bank (in light of the condition assessed in the initial condition survey subject to any changes of condition or impacts on the effectiveness of the Roman Bank approved by the Agency); or
- (ii) interfere with the Agency's access to or along that defence.”;

(b) paragraph 33 is subject to the following—

“Provided that the undertaker is not required to take any step which results in the Roman Bank exceeding the standards, efficiency for flood defence purposes, or otherwise reducing the risk of flooding based on the condition of the Roman Bank as assessed in the initial condition survey subject to any changes to condition as a result of specified works approved by the Agency.”;

(c) paragraph 35(1) is subject to the following—

“Provided that the undertaker is not required to maintain or repair the Roman Bank or to keep it free from obstruction, to a standard greater than its condition as assessed in the initial condition survey subject to any changes to condition as a result of specified works approved by the Agency.”; and

(d) paragraph 36 is subject to the following—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“Provided that the undertaker is not required to restore efficiency, damage or other impairments at the Roman Bank to a standard greater than its condition as assessed in the initial condition survey subject to any changes to condition as a result of specified works approved by the Agency.”.

PART 5

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

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

49. In this Part of this Schedule—

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

“drainage authority” means in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(13);

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

“plans” includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements;

“specified work” means any of the following works carried out in relation to any ordinary watercourse—

- (a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (b) the construction or alteration of a bridge or other structure;
- (c) erecting a culvert in the watercourse; or
- (d) altering a culvert in a manner that would be likely to affect the flow of the watercourse.

50.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 14 days of the submission of the plans reasonably request.

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 58.

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

- (a) must not be unreasonably withheld or delayed;

(13) 1991 c. 59.

- (b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and
 - (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, ordinary watercourse or for the prevention of flooding.
- (5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

51. Without limiting paragraph 50, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

52.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 50, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority, and an officer of the drainage authority is entitled to watch and inspect the construction of such works at all reasonable times and on reasonable notice.

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

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

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

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

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

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 58.

53.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work until the date falling 12 months from the date of completion of the specified work maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by the undertaker for the purpose of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to sub-paragraph (4) and paragraphs 55 and 56 if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is reasonably necessary for such compliance and may recover any reasonable expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 58.

(5) This paragraph does not apply to—

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

54. Subject to paragraphs 55 and 56 and sub-paragraph 53(5)(b), if, by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

55. The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur in—

- (a) the examination or approval of plans under this Part of this Schedule; and
- (b) inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and
- (c) subject at all times to receiving the prior written approval of the undertaker, in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

56.—(1) Without limiting the other provisions of this Part, the undertaker must make reasonable compensation to the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work;
- (b) any raising or lowering of the water table in land adjoining the authorised project or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such lands,

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

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(3) The fact that any act or thing may have been done by the drainage authority on behalf of the undertaker or in accordance with a plan approved or deemed to have been approved by the drainage authority or in accordance with any requirement of the drainage authority or under its supervision does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the drainage authority fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

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

57. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority or to its satisfaction does not (in the absence of negligence on the part of the drainage authority, its officers, contractors or agents), relieve the undertaker from any liability under this Part.

58. Any dispute arising between the undertaker and the drainage authority under this Part is to be determined by arbitration under article 49 (arbitration).

PART 6

FOR THE PROTECTION OF ANGLIAN WATER

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

60. In this Part of this Schedule—

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

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

- (a) any drain or works vested in Anglian Water under the Water Industry Act 1991⁽¹⁴⁾; and
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

(14) 1991 c. 56.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

“functions” includes powers and duties;

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

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

61. The undertaker will not interfere with, build over or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

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

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

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

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016⁽¹⁵⁾ or other legislations and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed, and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

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

64. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker will, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 49 (arbitration).

(15) S.I. 2016/1154.

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

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

67. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 62 to 64 and 66 any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker will—

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

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

68. Any agreement or approval of Anglian Water required under this Part of this Schedule is deemed to have been given if it is neither given nor refused within 28 days (or such other period as may be agreed between the parties acting reasonably) of the date of submission of a request for such agreement or approval, or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal.

69. Any dispute arising between the undertaker and Anglian Water under this Part of this Schedule or the Order must be referred to and settled by arbitration under article 49 (arbitration) unless otherwise agreed in writing between the undertaker and Anglian Water.

SCHEDULE 9

Article 46

DEEMED MARINE LICENCE

PART 1

INTRODUCTION

Interpretation

1.—(1) In this licence—

“the 2009 Act” means the Marine and Coastal Access Act 2009(16);

“AOD” means above ordnance datum;

“authorised development” has the meaning given in paragraph 4;

“BFFS” means the Boston and Boston and Fosdyke Fishing Society Limited (Registration number 16773 R);

(16) 2009 c. 23.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

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

“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(17);

“capital dredging” means dredging which comprises the excavation of the seabed, in an area or down to a level (relative to ordnance datum) not previously dredged during the preceding 10 years;

“CEMP” means construction and environmental management plan;

“commence” means beginning to carry out any part of a licensed activity comprised in or carried out for the purposes of the authorised development other than operations consisting of pre-construction ecological mitigation, archaeological investigations, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or contractors’ signage and notices and “commenced” and “commencement” are to be construed accordingly;

“Defra” means the Department for Environment, Food and Rural Affairs;

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

“designated bird species” means any species which is a constituent named part of The Wash Special Protection Area/Ramsar/Site of Special Scientific Interest (“Protected Sites”) non-breeding waterbird assemblage feature, or any species constituting a site feature in its own right on The Haven above Hobhole Drain; expanded to include any wader, gull, duck, goose, swan, or other waterbird species when monitoring downstream of Hobhole Drain confluence and into The Wash (i.e. inside Protected Sites boundaries);

“environmental statement” means the document of that description certified by the Secretary of State as the environmental statement for the purposes of this Order under article 47 (certification of documents, etc.) as supplemented by the document set out in Part 2 of Schedule 10;

“Forward Look” and “Close Out” requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) as amended, updated or superseded from time to time;

“harbour authority” means the Port of Boston Limited;

“licensed activity” means any activity described in Part 2 of this licence;

“maintain” in relation to the authorised development includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that such works do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

(17) 1971 c. 80.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“maintenance dredging” means any activity which comprises the removal of recently accumulated sediments such as mud, sand and gravel in order to keep channels, berths and other areas at their designed depths and which takes place in circumstances where—

- (a) the level of the seabed to be restored by the dredging is not lower than it has been at any time during the past 10 years; and
- (b) there is evidence that dredging has previously been undertaken to that level (or lower) during that period;

“the marine area” has the meaning given to ‘UK marine area’ in section 42 of the 2009 Act;

“Marine Case Management System” or “MCMS” means the Marine Management Organisation’s online case management system;

“Marine Noise Registry” means the database developed and maintained by the Joint Nature Conservation Committee on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;

“Maritime and Coastguard Agency” means the executive agency of the Department for Transport;

“Mean High Water Springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“MMO” means the Marine Management Organisation;

“navigation management plan” means the navigation management plan to be produced in accordance with condition 14 and which may be approved by the MMO in accordance with the procedure in Part 4;

“Navigation Management Planning Process: Risk to Birds” means the document of that description certified by the Secretary of State as the Navigation Management Planning Process: Risk to Birds for the purposes of this Order under article 47 (certification of documents, etc.);

“navigation management plan template” means the document of that description certified by the Secretary of State as the template navigation management plan for the purposes of this Order under article 47 (certification of documents, etc.);

“navigation risk assessment” means the document of that description certified by the Secretary of State as the navigation risk assessment for the purposes of this Order under article 47 (certification of documents, etc.);

“office hours” means the period from 09:00 until 17:00 on any business day;

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

“the Order” means the Boston Alternative Energy Facility Development Consent Order 2023;

“other navigation risk assessment” means any assessment of navigation risk required by the harbour authority or the MMO from time to time;

“outline air quality deposition monitoring plan” means the document of that description certified by the Secretary of State as the outline air quality deposition monitoring plan for the purposes of this Order under article 47 (certification of documents, etc.);

“outline landscape and ecological mitigation strategy” means the document of that description certified by the Secretary of State as the outline landscape and ecological mitigation strategy for the purposes of this Order under article 47 (certification of documents, etc.);

“outline marine mammal mitigation protocol” means the document of that description certified by the Secretary of State as the outline marine mammal mitigation protocol for the purposes of this Order under article 47 (certification of documents, etc.);

“The Haven” means the part of the River Witham, known as The Haven; and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“undertaker” means Alternative Use Boston Projects Limited (company number 11013830, whose registered office is at 26 Church Street, Bishop’s Stortford, Hertfordshire, England, CM23 2LY) or any transferee under article 9 (consent to transfer of benefit of Order) of the Order.

(2) Unless otherwise specified, all geographical co-ordinates given in this licence are in latitude and longitude degrees and minutes to two decimal places.

2.—(1) Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence are as follows—

- (a) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH; Tel. – 0300 123 1032, Email – marine.consents@marinemangement.org.uk or such replacement contact details as are notified to the undertaker in writing by the MMO;
- (b) The MMO Local Office – Marine Management Organisation, MMO Lowestoft Office, Pakefield Road, Lowestoft, Suffolk, NR33 0HT; Tel. – 01502 573 149, Email – lowestoft@marinemangement.org.uk or such replacement contact details as are notified to the undertaker in writing by the MMO.

(2) The contact details for the MMO Marine Pollution Response Team are Tel. (during office hours) – 0300 200 2024, Tel. (outside office hours) – 07770 977 825 or 0845 051 8486 and Email – dispersants@marinemangement.org.uk, or such replacement contact details notified to the undertaker in writing by the MMO.

(3) Unless otherwise stated in writing by the MMO, all notifications required by this licence must be sent by the undertaker to the MMO using the MCMS.

PART 2

LICENSED ACTIVITIES

3. Subject to the licence conditions in Part 3 of this licence, this licence authorises the undertaker (and any agent, contractor or subcontractor acting on its behalf) to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

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

4.—(1) In this licence, “authorised development” means the construction, maintenance and operation of the following activities authorised in relation to the construction, maintenance and operation of Work No. 4—

- (a) the construction of a suspended deck wharf structure, forming 7.2m AOD flood defence line wall, containing three berthing points and tie-in to the existing flood defence;
- (b) the creation by capital dredging, use and maintenance of a berthing pocket within the following parameters—

Table 1

<i>Dimension</i>	<i>Parameter</i>
Length	570m ±5%
Width	110m ±5%

<i>Dimension</i>	<i>Parameter</i>
Depth	-3.5m OD $\pm 5\%$
Area to be dredged	62,700 m ² $\pm 10\%$
Volume of material to be removed	225,000m ³ $\pm 10\%$

- (c) the construction and maintenance of scour protection;
- (d) the construction of piles and pile caps within The Haven supporting piers and fendering;
- (e) the construction of fendering within The Haven;
- (f) the construction of a mooring within The Haven;
- (g) the implementation of appropriate lighting to ensure safe operation of the wharf;
- (h) the construction of a drainage system for the wharf;
- (i) the implementation of shore to ship power;
- (j) the powers conferred by article 19(1) (powers in relation to relevant navigations or watercourses) of this Order;
- (k) for the purposes of, or in connection with, the construction, operation or maintenance of any of the works and other development mentioned above, ancillary or related development which does not give rise to any materially new or materially different effects than those assessed in the environmental statement, consisting of—
 - (i) activities within The Haven and within the Order limits to—
 - (aa) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;
 - (bb) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(18)) obtained in carrying out any such operations;
 - (cc) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);
 - (dd) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of The Haven;
 - (ee) construct, place and maintain works and structures; and
 - (ff) provide lighting, signage and aids to navigation,
 - (ii) other works and development—
 - (aa) to provide or alter embankments, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, lighting and fencing;
 - (bb) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses; and
 - (cc) to provide works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, operation or maintenance of the authorised development;

(18) 1995 c. 21.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (iii) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including—
 - (aa) maintenance dredging; and
 - (bb) other works associated with the provision of ecological mitigation, or to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works;
- (iv) activities to carry out works and development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the operation and maintenance of the authorised development; and
- (l) any other development within the meaning of section 32 (meaning of “development”) of the 2008 Act that is authorised by the Order;

but does not include the removal, relocation or detonation of ordinance.

(2) The undertaker (and any agent, contractor or subcontractor acting on its behalf) may engage in the licensed activities in the area bounded by the coordinates set out in Table 2 in this paragraph and more particularly shown on the works plans, to the extent that they fall below MHWS at the time the licensed activities are carried out.

Table 2

<i>Point Reference</i>	<i>Easting</i>	<i>Northing</i>
P01	534289.711000	342260.128000
P02	534168.677241	342181.781948
P03	534186.659851	342242.491799
P04	533845.617735	342661.592680
P05	533947.150000	342716.200000

(3) The undertaker (and any agent, contractor or subcontractor acting on its behalf) may engage in works associated with the provision of ecological mitigation in the area bounded by the coordinates set out in Table 3 in this paragraph and more particularly shown on the works plans, to the extent that they fall below MHWS at the time the works are carried out.

Table 3

<i>Point Reference</i>	<i>Easting</i>	<i>Northing</i>
MP01	534347.890096	342095.811837
MP02	534341.169854	342093.522370
MP03	534338.522725	342044.386572
MP04	534531.722964	341792.122480
MP05	534565.378031	341825.936298

PART 3

CONDITIONS

General conditions

5. The undertaker must notify the MMO at the earliest opportunity of any change to the information upon which the granting of this licence was based.

6.—(1) The undertaker must notify the HM Coastguard (mail to: nmoccontroller@hmcg.gov.uk) prior to commencement of any licensed activities.

(2) A copy of the notification must be provided to the MMO via MCMS within 24 hours of issue of the notification in sub-paragraph (1).

7.—(1) The undertaker must ensure that local mariners and fishermen's organisations are made fully aware of all licensed activities through a local notice to mariners issued at least 5 days before the commencement of the works.

(2) The notice to mariners must be updated and re-issued at fortnightly intervals during construction activities and within 5 days of any planned operations.

(3) A copy of the notice must be provided to the MMO via MCMS within 24 hours of issue of a notice under sub-paragraphs (1) or (2).

Vessels

8.—(1) The MMO must be notified in writing of any vessel being used to carry on any licensed activity on behalf of the undertaker.

(2) Such notification must be received by the MMO in writing not less than 24 hours before the commencement of the licensed activity.

(3) Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

9. The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments are provided to, read and understood by the masters of any vessel being used to carry on any licensed activity, and that a copy of this licence and subsequent revisions or amendments must be held on board any such vessel.

Agents/contractors/sub-contractors

10.—(1) The undertaker must provide the name, address and function in writing of any agents, contractors or sub-contractors that will carry on any licensed activity on behalf of the undertaker.

(2) Such notification must be received by the MMO in writing not less than 24 hours before the commencement of the licensed activity.

11.—(1) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors and sub-contractors that will be carrying out any licensed activity on behalf of the undertaker.

(2) The undertaker must keep a copy of this license and any subsequent revisions or amendments available for inspection at its registered address and any site office location at or adjacent to a construction site.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Construction environmental management plan

12.—(1) The undertaker must submit a CEMP in writing to the MMO for written approval in accordance with the procedure in Part 4, following consultation with the harbour authority, the relevant statutory nature conservation body and the Environment Agency, at least 13 weeks prior to the commencement of any licensed activity.

(2) Unless otherwise agreed by the MMO in writing, the CEMP must include the following details (where relevant to the particular licensed activity)—

- (a) the detailed construction methodology to be employed by the undertaker in carrying out the licensed activity;
 - (b) a construction programme including—
 - (i) a planned timetable for each licensed activity including timings for mobilisation of plant and delivery by sea;
 - (ii) method of delivery of material to site;
 - (iii) a plan for notifying the MMO of the commencement and cessation of licensed activities and phases of activities;
 - (iv) a plan for notifying the MMO of changes to the construction programme;
 - (c) the detailed methodology for the excavation and subsequent management of any dredged material removed in the construction and maintenance of the berthing pocket including—
 - (i) the volume of material to be dredged;
 - (ii) sediment sample analysis results, which must not exceed three years in age and which must be completed by a laboratory validated by the MMO and undertaken in accordance with the sample plan approved under condition 25;
 - (iii) where contamination is identified by the sediment sample analysis results, a monitoring and action plan to address the potential release of contaminants from dredged material into the watercourse;
 - (iv) provision that dredging activities must only be undertaken from 1 July to 28 February inclusive and the details on the timing of dredging activities throughout those months;
 - (v) provision that no dredged materials are to be disposed of at sea or in other waters otherwise than in accordance with a marine licence;
 - (d) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (e) a waste management and disposal plan;
 - (f) plans and sections;
 - (g) details of where the licensed activity was assessed in the environmental statement;
 - (h) for any materials to be placed in or removed from the marine area, information on the volume and size of materials, methods of placement and removal of materials, types of materials, source of materials and methods of disposal of materials;
 - (i) environmental mitigation measures, which must be substantially in accordance with the measures set out in chapter 17 (marine and coastal ecology) of the environmental statement; and
 - (j) monitoring measures.
- (3) The undertaker must not commence the licensed activity until the MMO has approved in writing the submitted CEMP.

(4) Unless otherwise agreed by the MMO in writing, the CEMP must be implemented as approved by the MMO.

Piling

13.—(1) The undertaker must submit a piling method statement in writing to the MMO for written approval in accordance with the procedure in Part 4, following consultation with the Environment Agency, the relevant statutory nature conservation body, Lincolnshire Wildlife Trust and the Royal Society for the Protection of Birds, at least 13 weeks prior to the commencement of any licensed activities consisting of piling.

(2) Unless otherwise agreed by the MMO, the piling method statement must include the following—

- (a) the use of pile pads and pile shrouds at all times;
- (b) measures for managing potential risks to marine mammals in accordance with the marine mammal mitigation protocol approved under condition 17;
- (c) provision that piling activities must only be undertaken between 1 June and 30 September (inclusive) and details on the timing of piling activities throughout those months;
- (d) details of the anticipated spread of piling activity throughout a working day with piling permitted between the hours of 0800 to 2000 hours on Monday to Saturday (with the option of 0700 to 1900);
- (e) provision that no planned simultaneous impact piling will be carried out; and
- (f) monitoring measures.

(3) The undertaker must not commence any licensed activities consisting of piling until the MMO has approved in writing the submitted piling method statement.

(4) Unless otherwise agreed by the MMO in writing, percussive piling must only be carried out in accordance with the relevant piling method statement as approved in writing by the MMO.

Navigation management plan

14.—(1) The undertaker must submit a navigation management plan in writing to the MMO for written approval in accordance with the procedure in Part 4, following consultation with BFFS, the harbour authority, the relevant statutory nature conservation body and the Environment Agency to the extent that it relates to matters relevant to their functions, at least 13 weeks prior to the commencement of any licensed activity.

(2) The navigation management plan submitted for approval under sub-paragraph (1) must be informed by the assessment of risks to navigational safety in the navigation risk assessment or in any other navigation risk assessment and be substantially in accordance with the recommendations as to the management of vessel movements on The Haven as set out in the navigation risk assessment or in any other navigation risk assessment.

(3) The navigation management plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the navigation management plan template.

(4) The navigation management plan must include details of—

- (a) the construction timelines;
- (b) the potential risks to navigation;
- (c) communication measures;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (d) measures for managing potential risks to marine mammals in accordance with the marine mammal mitigation protocol approved under condition 17;
 - (e) measures for managing disturbance to designated bird species developed in accordance with the process in the Navigation Management Planning Process: Risk to Birds;
 - (f) measures for managing potential biosecurity risks; and
 - (g) how each stage of the construction process and the operation of the authorised development will be managed to ensure a minimal impact on the safety of navigation in The Haven and ensure that any delay or interference that may be caused to vessels which may be using The Haven is minimised as far as reasonably practicable.
- (5) The undertaker must not commence the licensed activities until the MMO has approved in writing the submitted navigation management plan.
- (6) Unless otherwise agreed by the MMO in writing, the navigation management plan must be implemented as approved by the MMO and
- (a) no vessels associated with the construction of the authorised development may be received at Work No. 4 until the measures relating to the matters in sub-paragraph 4(d) as set out in the navigation management plan have been implemented; and
 - (b) no vessels associated with the operation of Work No. 1 may be received at Work No. 4 until the measures relating to the matters in sub-paragraph 4(e) as set out in the navigation management plan have been implemented.
- (7) Following approval of the navigation management plan in accordance with the procedure in Part 4 the undertaker may from time to time submit revised navigation management plans to the MMO following consultation with BFFS, the harbour authority, the relevant statutory nature conservation body and the Environment Agency to the extent that it relates to matters relevant to their functions.
- (8) A revised navigation management plan submitted to the MMO in accordance with sub-paragraph (7) and approved by the MMO in accordance with Part 4 supersedes any other navigation management plan in effect on the date of approval.

Marine archaeology

15.—(1) The undertaker must submit an archaeological written scheme of investigation (WSI) and protocol for archaeological discoveries (PAD) in writing to the MMO for written approval in accordance with the procedure in Part 4, following consultation with Historic England and the relevant planning authority, at least 6 weeks prior to the commencement of any licensed activity with the potential to affect buried archaeological assets.

(2) The undertaker must not commence the licensed activities until the MMO has approved in writing the submitted WSI and PAD.

(3) Unless otherwise agreed by the MMO in writing, all licensed activities must adhere to the terms of the WSI and PAD as approved by the MMO.

Marine pollution contingency plan

16.—(1) The undertaker must submit a marine pollution contingency plan in writing to the MMO for written approval in accordance with the procedure in Part 4, following consultation with the relevant statutory nature conservation body, the Environment Agency and the harbour authority, at least 13 weeks prior to the commencement of any licensed activity.

(2) The marine pollution contingency plan must—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) set out the undertaker's assessment of the likely risks which could arise as a result of a spill or collision during construction and maintenance of the authorised development and the methods and procedures the undertaker intends to put in place to address those risks; and
 - (b) set out the undertaker's assessment of the potential for litter derived from either vessels or from land based sources within the authorised development to enter the marine area and identify the management measures to be put in place.
- (3) The undertaker must not commence the licensed activities until the MMO has approved in writing the submitted marine pollution contingency plan.
- (4) Unless otherwise agreed by the MMO in writing, the marine pollution contingency plan must be implemented as approved by the MMO.

Marine mammal mitigation protocol

- 17.—**(1) The undertaker must submit a marine mammal mitigation protocol in writing to the MMO for approval in accordance with the procedure in Part 4, following consultation with the relevant statutory nature conservation body and Lincolnshire Wildlife Trust, at least 13 weeks prior to the commencement of any of licensed activity.
- (2) The marine mammal mitigation protocol submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline marine mammal mitigation protocol.
- (3) The undertaker must not commence the licensed activities until the MMO has approved in writing the submitted marine management protocol.
- (4) Unless otherwise agreed by the MMO in writing, the marine mammal mitigation protocol must be implemented as approved by the MMO.

Landscape and ecological mitigation strategy

- 18.—**(1) The undertaker must submit a landscape and ecological mitigation strategy in writing to the MMO for approval in accordance with the procedure in Part 4, following consultation with Boston Borough Council, the Environment Agency, the relevant statutory nature conservation body, Lincolnshire Wildlife Trust and the Royal Society for the Protection of Birds, at least 13 weeks prior to the commencement of any of licensed activity.
- (2) The MMO's approval of the landscape and ecological mitigation strategy is restricted to the parts of that strategy that relate to any activities below MHWS, with the remainder approved by the relevant planning authority under requirement 6 of Schedule 2 (requirements).
- (3) The landscape and ecological mitigation strategy submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline landscape and ecological mitigation strategy.
- (4) The landscape and ecological mitigation strategy approved under sub-paragraph (1) must include details of—
- (a) mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the construction of the authorised development, which must include but is not limited to implementation plans demonstrating how impacts on priority saltmarsh habitats will be avoided and/or reduced including creating areas to provide ornithological mitigation;
 - (b) mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the operation of the authorised development, which must include but is not limited to implementation

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- plans demonstrating how impacts on priority saltmarsh habitats will be avoided and/or reduced including creating areas to provide ornithological mitigation;
- (c) the results of the Defra biodiversity off-setting metric together with the off-setting value required, the nature of such off-setting and evidence that the off-setting value provides for the required biodiversity compensation, risk factors (including temporal lag) and long term management and monitoring;
 - (d) the site or sites on which the compensation off-setting required pursuant to sub-paragraph (c) will be provided together with evidence demonstrating that the site or sites has/have been chosen in accordance with the prioritisation set out in the outline landscape and ecological mitigation strategy;
 - (e) certified copies of the completed legal agreements securing the site or sites identified in sub-paragraph (d) to enable enactment of the biodiversity off-setting scheme and the biodiversity off-setting management and monitoring plan as approved in the landscape and ecological mitigation strategy;
 - (f) any hard and soft landscaping to be incorporated within Work No. 4 including location, number, species, size of any planting and the management and maintenance regime for such landscaping; and
 - (g) an air quality deposition monitoring plan that must be substantially in accordance with the outline air quality deposition monitoring plan and must include the final numbers and locations of deposition monitoring locations, as agreed with the relevant statutory nature conservation body and the Environment Agency.
- (5) The undertaker must not commence the licensed activities until the MMO has approved in writing the submitted landscape and ecological mitigation strategy.
- (6) Unless otherwise agreed by the MMO in writing, the landscape and ecological mitigation strategy must be implemented as approved by the MMO or the relevant planning authority if applicable pursuant to sub-paragraph (2).

Concrete and cement

- 19.**—(1) Waste concrete, slurry or wash water from concrete or cement activities must not be discharged, intentionally or unintentionally, into the marine environment.
- (2) Concrete and cement mixing and washing areas must be contained and sited at least 10 metres from any watercourse or surface water drain to minimize the risk of run off entering a watercourse.
- (3) The containment required under sub-paragraph (2) must be appropriate to the material and include bunding of 110% of the total volume of all reservoirs and containers.

Coatings and treatment

- 20.** The undertaker must ensure that any coatings and any treatments are suitable for use in the marine environment and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency.

Spills, etc.

- 21.**—(1) The undertaker must—
- (a) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine area, including bunding of 110% of the total volume of all reservoirs and containers;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team, the harbour master and the Maritime and Coastguard Agency within 12 hours of the spill occurring; and
 - (c) store all waste in designated areas that are contained and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of runoff entering a watercourse.
- (2) The containment required under sub-paragraph (1)(c) must be appropriate to the material and include bunding of 110% of the total volume of all reservoirs and containers.

Removal of temporary structures etc.

22. The undertaker must remove all equipment, temporary structures, waste and debris associated with the licensed activities within 10 business days of the completion of those activities, unless otherwise agreed in writing by the MMO.

Dropped objects

23.—(1) All dropped objects must be reported to the harbour authority using the Dropped Object Procedure Form within six hours of the undertaker becoming aware of an incident.

(2) The MMO Marine Licensing Team require a copy of the Dropped Object Procedure Form to be submitted no later than 24 hours after reporting to the harbour authority under sub-paragraph (1).

(3) On receipt of the Dropped Object Procedure Form, the harbour authority or the MMO Marine Licensing Team may require relevant surveys to be carried out by the undertaker (such as side scan sonar), and the MMO or the harbour authority may require obstructions to be removed from the seabed at the undertaker's expense, if it is reasonable to do so.

Bathymetric surveys

24.—(1) Pre and post dredge bathymetrical surveys must be undertaken for each dredge campaign, and a report containing the survey results submitted in writing to the MMO within 4 weeks of completion of each dredge campaign.

(2) The pre-dredge bathymetrical survey must be undertaken within a 3 month period prior to each dredging campaign, and the post-dredge bathymetrical survey must be undertaken as soon as reasonably practicable and in any event within 1 week of completion of each dredging campaign.

(3) The report containing the survey results must include—

- (a) an interpretation of the difference between the pre and post dredge survey results and a volume calculation; and
- (b) the survey results on a chart showing the licensed dredge area and dredge depth.

Sediment sampling

25.—(1) The undertaker must submit a sample plan in writing to the MMO for written approval in accordance with the procedure in Part 4, following consultation with the Environment Agency.

(2) The sample plan must be made—

- (a) for capital dredging, at least 6 months prior to the commencement of any capital dredging; or
- (b) for maintenance dredging, at least six months prior to the end of every third year from the date of the previous sediment sample analysis.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (3) The sample plan must include details of—
 - (a) the volume of material to be dredged;
 - (b) the location of the area to be dredged;
 - (c) details of the material type proposed for dredging;
 - (d) the type and dredging methodology (including whether it is a capital or maintenance dredge, depth of material to be dredged and proposed programme for the dredging activities); and
 - (e) the location and depth of any supporting samples.
- (4) Unless otherwise agreed by the MMO in writing, the undertaker must undertake the sampling in accordance with the approved sample plan.
- (5) For capital dredging, the undertaker must submit sediment sample analysis results as part of the CEMP in accordance with condition 12 and the undertaker must not undertake the dredging activities until the MMO has approved the CEMP.
- (6) For maintenance dredging, the undertaker must submit sediment sample analysis results completed by a laboratory validated by the MMO at least 6 weeks prior to undertaking any maintenance dredging and the undertaker must not undertake any dredging until the MMO has approved the sediment sample analysis results.

Reporting of impact sound to the Marine Noise Registry

- 26.**—(1) Only when impact driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry (MNR)—
- (a) prior to the commencement of the licensed activities, information on the expected location, start and end dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry’s Forward Look requirements; and
 - (b) within 12 weeks of completion of impact pile driving/detonation of explosives, information on the exact locations and specific dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry’s Close Out requirements.
- (2) The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to sub-paragraph (1) above within 7 days of the submission.

Decommissioning

- 27.**—(1) Within 24 months of the permanent cessation of the operation of Work No. 4, the undertaker must submit details of a decommissioning scheme for the restoration and aftercare of the land for Work No. 4 (with the exception of the flood defence line wall which will remain in situ) to the MMO for approval in writing in accordance with the procedure in Part 4.
- (2) The scheme must include details of structures and buildings to be demolished or retained, details of the means of removal of materials following demolition, phasing of demolition and removal, details of restoration works (including any monitoring) and phasing thereof.
- (3) Unless otherwise agreed by the MMO in writing, the mitigation measures in place for habitat loss as a result of the construction of Work No. 4 must be maintained following the decommissioning of Work No. 4 and any routine maintenance and adaptive management measures and monitoring must continue whilst the measures are in place.
- (4) Sub-paragraph (3) does not apply where the MMO, in consultation with the relevant statutory nature conservation body, determines based on monitoring data submitted by the undertaker that the

intertidal habitat lost as a result of the construction of Work No. 4 has been restored following the decommissioning of Work No. 4 to provide a similar habitat as was present prior to the works being carried out that has the potential to be used by roosting and foraging birds.

(5) Unless otherwise agreed by the MMO in writing the decommissioning scheme must be implemented in accordance with the phasing set out therein as approved by the MMO.

Notice of completion of licensed activity

28. The undertaker must inform the MMO local office and MMO Marine Licensing Team of completion of the licensed activities, in writing no more than 10 business days following the completion of the last licensed activity.

PART 4

PROCEDURE FOR THE DISCHARGE OF CONDITIONS

Meaning of “return”

29. In this Part, “return” means a submission by the undertaker for approval of—

- (a) a CEMP under condition 12;
- (b) a piling method statement under condition 13;
- (c) a navigation management plan under condition 14;
- (d) a WSI and PAD under condition 15;
- (e) a marine pollution contingency plan under condition 16;
- (f) a marine mammal mitigation protocol under condition 17;
- (g) a landscape and ecological mitigation strategy under condition 18;
- (h) a sample plan under condition 25; and
- (i) a decommissioning scheme under condition 27.

Further information regarding return

30.—(1) The MMO may request in writing such further information to be provided in writing from the undertaker as is necessary to enable the MMO to consider the return.

(2) If the MMO does not make a request under sub-paragraph (1) within 30 business days of the day immediately following that on which the return is received by the MMO, it is deemed to have sufficient information to consider the return and is not entitled to request further information after this date without the prior agreement of the undertaker.

Determination of returns

31.—(1) In determining the return the MMO may have regard to—

- (a) the return and any supporting information or documentation;
 - (b) any further information provided by the undertaker in accordance with paragraph 30; and
 - (c) such matters as the MMO reasonably thinks are relevant.
- (2) Having considered the return the MMO must—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) grant the return unconditionally;
 - (b) grant the return subject to conditions as the MMO thinks fit; or
 - (c) refuse the return.
- (3) In determining a return, the MMO may discharge its obligations under sub-paragraph (2)(a), (b) or (c) separately in respect of a part of the return only, where it is reasonable to do so.

Notice of determination

32.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the undertaker of the determination of the return within 13 weeks from the day immediately following that on which the return is received by the MMO, or as soon as reasonably practicable after that date.

(2) Where the MMO has made a request under paragraph 30, the MMO must give notice to the undertaker of the determination of the return within 13 weeks from the day immediately following that on which the further information is received by the MMO, or as soon as reasonably practicable after that date.

(3) Where the MMO determines it is not reasonably practicable to make a determination in accordance with sub-paragraphs (1) and (2) in 13 weeks, it must notify the undertaker as soon as reasonably practicable and provide confirmation in writing of the intended determination date.

(4) Where the MMO refuses the return the refusal notice must state the reasons for the refusal.

PART 5

CHANGES TO THE LICENCE

33.—(1) In the event that the undertaker wishes to undertake the licensed activity contrary to the conditions of this licence, it must inform the MMO at the earliest opportunity and request a variation to the conditions of this licence.

(2) The undertaker must not carry out any licensed activity contrary to the conditions of this licence until a variation to the licence has been approved in writing by the MMO pursuant to its powers under section 72(3) of the 2009 Act.

(3) The MMO must give notice of the determination of the variation to this licence within 13 weeks from the day immediately following that on which the variation was requested, or as soon as reasonably practicable after that date, subject to the undertaker providing an updated CEMP in accordance with condition 12 and adequately justifying the requested variation to the reasonable satisfaction of the MMO.

(4) Where the MMO determines it is not reasonably practicable to make a determination in accordance with sub-paragraph (3) in 13 weeks, it must notify the undertaker as soon as reasonably practicable and provide confirmation in writing of the intended determination date.

SCHEDULE 10

Article 47

DOCUMENTS AND PLANS TO BE CERTIFIED

PART 1

DOCUMENTS AND PLANS TO BE CERTIFIED

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>
Addendum to the outline ornithological compensation implementation and monitoring plan	9.116	0.0
Access and rights of way plans	4.5	0.0
Book of reference	3.3	2.0
Combined heat and power assessment	5.7	0.0
Compensation addendum	9.112	1.0
Compensation measures document	9.30	4.0
Design and access statement	5.3	0.0
Environmental statement	Volume 1, 6.2 Volume 2, 6.3 Volume 3, 6.4	1.0
Flood risk assessment	6.4.13	0.0
Harbour seal compensation measures document	9.110	0.0
Indicative generating station plans	4.9	2.0
Indicative wharf plans	4.11	0.0
Land plan and Crown land plan	4.2	0.0
Navigation Management Planning Process: Risk to Birds	9.70	0.0
Navigation management plan template	9.80	1.0
Navigation risk assessment	9.27	1.0
Outline air quality and dust management plan	9.39	0.0
Outline air quality deposition monitoring plan	9.51	2.0
Outline code of construction practice	7.1	0.0
Outline construction traffic management plan	7.2	0.0
Outline landscape and ecological mitigation strategy	7.4	4.0
Outline lighting strategy	7.5	0.0

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>
Outline marine mammal mitigation protocol	9.12	3.0
Outline ornithology compensation implementation and monitoring plan	9.81	1.0
Outline surface and foul water drainage strategy	9.4	2.0
Outline written scheme of investigation	7.3	2.0
Register of environmental actions and commitments	7.6	2.0
Roman Bank plan	4.12	0.0
Works plans	4.3	2.0

PART 2

ENVIRONMENTAL STATEMENT SUPPLEMENTS

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>
Addendum to Chapter 17 and Appendix 17.1 – Benthic Ecology, Fish and Habitats	9.15	0.0
Addendum to Environmental Statement Chapter 17 and Appendix 17.1 – Marine Mammals	9.14	1.0
Appendix 14.4 – Analysis of SO ₂ and O ₃ Concentrations to Justify Adoption of the Less Stringent Daily Mean NO _x Critical Level for Protection of Vegetation	9.8	0.0
Appendix 14.5 – Human Health Risk Assessment	9.9	0.0
Appendix 14.6 – Abnormal Emissions Assessment	9.10	0.0
Chapter 17 Marine and Coastal Ecology and Appendix 17.1 – Habitats Regulations Assessment – Ornithology Addendum	9.13	0.0
Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment Update	9.59	0.0
Habitats Regulations Assessment (HRA) Screening and Integrity Matrices	9.42	1.0
Indicative Construction Programme	9.18	0.0
Noise Modelling and Mapping Relating to Bird Disturbance at the Principal Application Site	9.50	0.0

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(1) <i>Document name</i>	(2) <i>Document reference</i>	(3) <i>Revision number</i>
Response to Environment Agency’s queries on Estuarine Processes	9.44	1.0
Updated Piling Noise Assessment	9.16	0.0
Wharf Construction Outline Methodology	9.17	0.0

SCHEDULE 11

Article 54

ORNITHOLOGY COMPENSATION MEASURES

1. In this Schedule—

“addendum to the outline ornithological compensation implementation and monitoring plan” means the document certified by the Secretary of State as the addendum to the outline ornithology compensation implementation and monitoring plan for the purposes of this Order under article 47 (certification of documents, etc.);

“compensation addendum” means the document “Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (for The Wash SPA)” certified by the Secretary of State as the compensation addendum for the purposes of this Order under article 47 (certification of documents, etc.);

“compensation measures document” means the document “Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures” certified by the Secretary of State as the compensation measures document for the purposes of this Order under article 47 (certification of documents, etc.) as supplemented by the compensation addendum;

“hot commissioning of line 2 of Work No. 1A” means the first date on which waste is combusted to produce steam for more than 8 hours continuously in the second waste processing line of Work No. 1A during the commissioning phase of that line;

“OCIMP” means the ornithology compensation implementation and monitoring plan for the delivery of measures to compensate for the predicted disturbance to roosting, bathing and loafing waterbirds from The Wash SPA and Ramsar Site (and functionally linked habitat) as a result of the authorised development;

“OEG” means the Ornithology Engagement Group, which will include, as a minimum, the relevant statutory nature conservation body and the Royal Society for the Protection of Birds and which will oversee the implementation, management and monitoring of the compensation measures;

“outline ornithology compensation implementation and monitoring plan” means the document certified by the Secretary of State as the outline ornithology compensation implementation and monitoring plan for the purposes of this Order under article 47 (certification of documents, etc.);

“The Haven” means the part of the River Witham, known as The Haven; and

“The Wash SPA and Ramsar Site” means the site designated as The Wash Special Protection Area and The Wash Ramsar Site.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

2. The authorised development may not be commenced until a plan for the work of the OEG has been submitted to and approved by the Secretary of State, following consultation with the members of the OEG. Such plan must include—

- (a) terms of reference of the OEG;
- (b) details of the membership of the OEG;
- (c) details of the schedule of meetings, timetable for preparation of the OCIMP and reporting and review periods;
- (d) the dispute resolution mechanism; and
- (e) minutes from all consultations with the members of the OEG and copies of any written consultation responses from the OEG.

3. Following consultation with the OEG, the OCIMP must be submitted to and approved by the Secretary of State, following consultation with all members of the OEG and the local planning authority or authorities for the land containing the compensation measures, and the relevant statutory nature conservation body. The OEG must be consulted by the Secretary of State further as required during the approval process.

4. The OCIMP submitted for the approval of the Secretary of State must be substantially in accordance with the outline ornithology compensation implementation and monitoring plan as supplemented by the addendum to the outline ornithological compensation implementation and monitoring plan.

5. The OCIMP must include measures to compensate for the predicted disturbance to roosting, bathing and loafing waterbirds from The Wash SPA and Ramsar Site (and functionally linked habitat), must be based on the criteria set out in paragraph 3.5.5 of the compensation measures document, must contain the relevant matters set out in paragraph 4.10.4 of the compensation measures document and must include in particular—

- (a) details of location(s) where compensation measures will be delivered and the suitability of the site(s) to deliver the measures (including why the location is appropriate ecologically and likely to support successful compensation);
- (b) details of landowner agreements demonstrating how the land and/or rights have been or will be bought or leased and assurances that the land management will deliver the ecology objectives of the OCIMP;
- (c) details of designs of the compensation measures and how risks from avian or mammalian predation and unauthorised human access will be mitigated;
- (d) an implementation timetable for delivery of the compensation measures that ensures all compensation measures are in place prior to the impact occurring: for the compensation for disturbance by the increased number of vessels, the measures will be in place for at least two years prior to the hot commissioning of line 2 of Work No. 1A);
- (e) criteria for assessing the effectiveness of the compensation measures;
- (f) details of the proposed ongoing monitoring and reporting on the effectiveness of the measures, including: survey methods; success criteria; timescales for the monitoring and monitoring reports to be delivered; and details of the factors used to trigger alternative compensation measures and/or adaptive management measures;
- (g) details of any adaptive management measures;
- (h) provision for annual reporting to the Secretary of State, to include details of the use of each site by waterbirds (split into species accounts) to identify barriers to success and target the adaptive management measures. This will include an account of the number of birds using each site; evidence of birds roosting, foraging and bathing around high tide periods and

any evidence of continued disturbance from vessels at the authorised development and at the mouth of The Haven;

- (i) details of the management and maintenance prescriptions and a maintenance schedule appropriate to the habitats to be created at each compensation location; and
- (j) minutes from all consultations with the OEG and copies of any written consultation responses from the OEG on matters relating to the development of the OCIMP.

6. The undertaker must implement the measures as set out in the OCIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State following consultation with all members of the OEG, the relevant statutory nature conservation body and the local planning authority or authorities. In particular—

- (a) for the compensation for disturbance by the increased number of vessels, no hot commissioning of line 2 of Work No. 1A may begin until two full years following the implementation of the relevant measures set out in the OCIMP have elapsed.

7. The undertaker must notify the Secretary of State of completion of implementation of the measures set out in the OCIMP.

8. Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body and made publicly available. This must include details of any finding that the measures have been ineffective in creating suitable roosting site(s) to support any birds that have been displaced through disturbance by the increased numbers of vessels using The Haven as a result of the authorised development and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State following consultation with the relevant statutory nature conservation body, the OEG and the local planning authority or authorities for the land containing the compensation measures.

9. Unless otherwise agreed in writing by the Secretary of State or unless the measures set out in the OCIMP have already been delivered, the undertaker must not commence construction of Work No. 1 until it has first—

- (a) provided a reasonable estimate of the cost of delivery of the compensation measures; and
- (b) put in place either—
 - (i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or
 - (ii) an alternative form of security for that purpose, that has been approved by the Secretary of State.

10. The compensation measures delivered under this Schedule must not be decommissioned without the written approval of the Secretary of State, following consultation with the relevant statutory nature conservation body and the OEG.

11. The OCIMP approved under this Schedule includes any amendments that may subsequently be agreed in writing by the Secretary of State, in consultation with the relevant statutory nature conservation body, the OEG and the local planning authority or authorities for the land containing the compensation measures. Any amendments to or variations of the approved OCIMP must be in accordance with the information set out in the compensation measures document and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the compensation measures document.

12. In the event of any conflict or inconsistency between the terms of the compensation measures document and the provisions of this Order, the provisions of this Order shall prevail.

SCHEDULE 12

Article 55

HARBOUR SEAL COMPENSATION MEASURES

1. In this Schedule—

“harbour seal compensation measures document” means the document “Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures for Harbour Seal” certified by the Secretary of State as the harbour seal compensation measures document for the purposes of this Order under article 47 (certification of documents, etc.);

“harbour seal compensation strategy” means a strategy for the provision of measures to compensate for predicted collision effects on harbour seals in the WNNC as a result of the authorised development;

“harbour seal rehabilitation” means compensation to be provided which must be sufficient to rescue and rehabilitate five harbour seals per year, on average, for the duration of the operational period, with the harbour seals being released back into the WNNC if appropriate or otherwise into the same biogeographic region; and

“WNNC” means the site designated as The Wash and North Norfolk Coast Special Area of Conservation.

2. No part of the authorised development may commence until a harbour seal compensation strategy has been submitted to and approved by the Secretary of State, following consultation with the relevant statutory nature conservation body.

3. The strategy submitted for approval must be based on the measures set out in the harbour seal compensation measures document and must include—

- (a) details of the harbour seal rehabilitation compensation measures to be provided, including the timeframe for delivery, which must allow for the harbour seal rehabilitation to commence prior to the operational period and/or prior to any impact to harbour seals as a result of any part of the authorised development occurring, whichever is the earlier;
- (b) evidence of how the harbour seal rehabilitation is to be funded and the legal mechanisms in place to ensure that harbour seal rehabilitation is funded over the specified timeframe for delivery;
- (c) an implementation plan for the harbour seal rehabilitation which must include a requirement for the undertaker to enter into a binding legal contract with Skegness Natureland Limited or any other such company or charity which is able to provide the harbour seal rehabilitation; and
- (d) details of the proposed scheme for ongoing monitoring and reporting of the effectiveness of the harbour seal rehabilitation compensation measures and any adaptive management measures.

4. The undertaker must implement the measures set out in the harbour seal compensation strategy approved under this Schedule unless otherwise agreed by the Secretary of State in writing, following consultation with the relevant statutory nature conservation body.

5. The harbour seal compensation strategy approved under this Schedule includes any amendments that may subsequently be agreed in writing by the Secretary of State, following consultation with the relevant statutory nature conservation body.

6. Results from the monitoring scheme specified in paragraph 3(d) must be submitted at least every five years, starting from the beginning of the operational period, to the Secretary of State and the relevant statutory nature conservation body and made publicly available. This must include details of any findings that the harbour seal compensation strategy has been ineffective and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

be implemented by the undertaker as approved in writing by the Secretary of State following consultation with the relevant statutory nature conservation body.