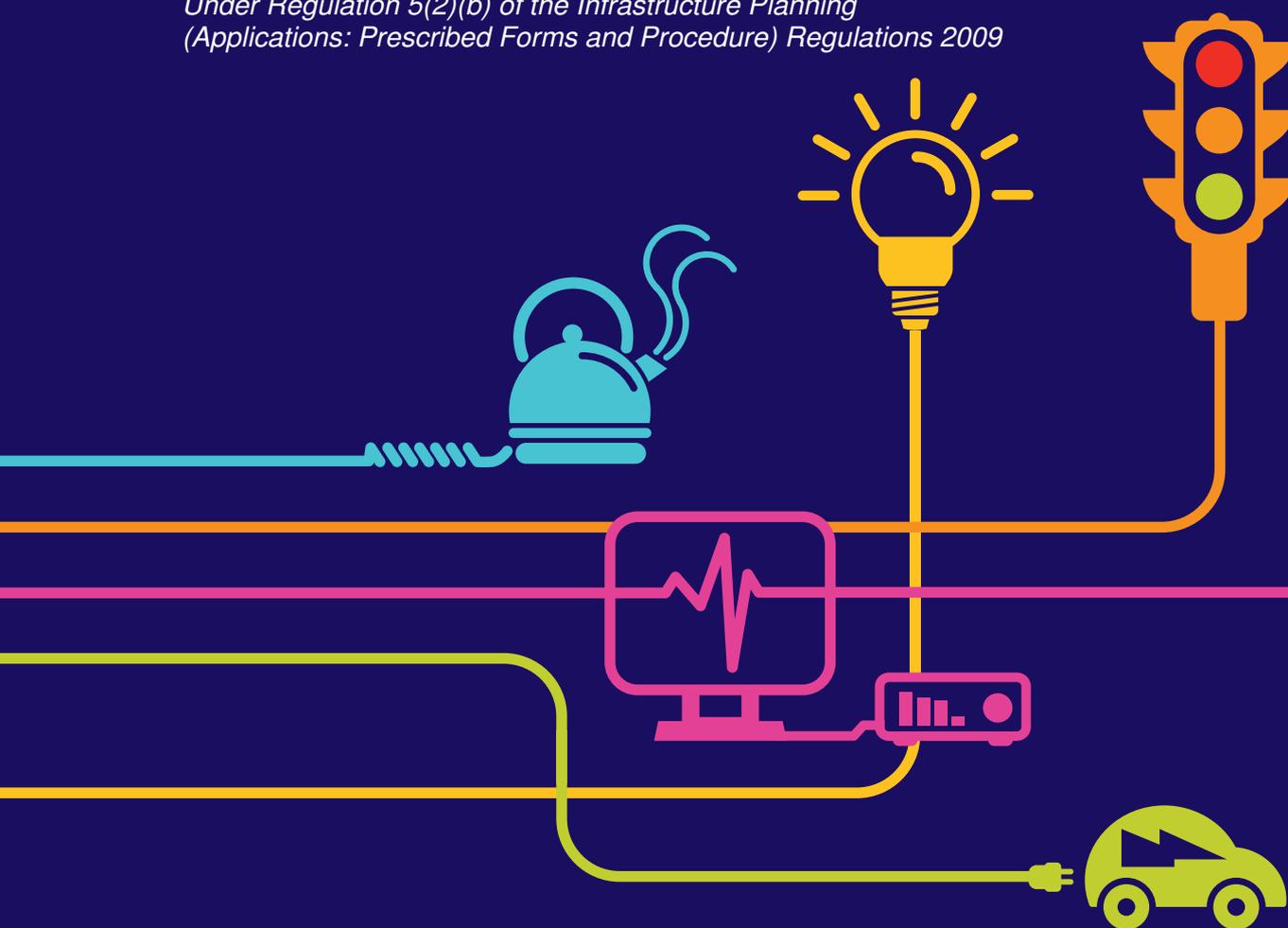


# Draft Development Consent Order

National Grid (Richborough Connection Project)  
Order

*Under Regulation 5(2)(b) of the Infrastructure Planning  
(Applications: Prescribed Forms and Procedure) Regulations 2009*





**INFRASTRUCTURE PLANNING**

**PLANNING ACT 2008**

**THE INFRASTRUCTURE PLANNING  
(APPLICATIONS: PRESCRIBED FORMS AND  
PROCEDURE) REGULATIONS 2009**

**THE NATIONAL GRID (RICHBOROUGH CONNECTION  
PROJECT) DEVELOPMENT CONSENT ORDER**

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**Draft Development Consent Order**

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**INFRASTRUCTURE PLANNING**

**The National Grid (Richborough Connection Project)  
Development Consent Order 201[ ]**

*Made* - - - - [ ]

*Coming into force* - - [ ]

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An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(a), for an order under sections 37, 114, 115, 117(4), 120, 122 and 141 of the Planning Act 2008(b).

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act.

The Secretary of State in exercise of his powers under subsection 132(2) of the 2008 Act hereby records that he is satisfied that subsections 132(3) of that Act apply to the special category land described in the book of reference and shown on the special category and crown land plans because either over which rights are to be compulsorily acquired when burdened with the Order right will be no less advantageous than it was before to the following persons—

- (a) that land, when burdened with the Order rights authorised to be compulsorily acquired under this Order, is to be no less advantageous than it was before to the persons in whom it is vested and the public, other persons, if any, entitled to rights of common or other rights, and the public; or;
- (b) that land forms part of an open space, none of it is of any of the other descriptions in subsection 132(1) and Order rights are being acquired for a temporary (although possibly long-lived) purpose.

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the National Grid (Richborough Connection Project) Development Consent Order 201[ ] and comes into force on [ ] 201[ ].

#### **Interpretation**

2.—(1) In this Order, unless the context requires otherwise,—

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

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

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(a) S.I. 2009/2264.

(b) 2008 c. 29.

(c) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.

(d) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compulsory Purchase Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

- “the 1980 Act” means the Highways Act 1980(a);
- “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(b);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(c);
- “the 1990 Act” means the Town and Country Planning Act 1990(d);
- “the 1991 Act” means the New Roads and Street Works Act 1991(e);
- “the 2008 Act” means the Planning Act 2008(f);
- “the 2009 Act” means the Marine and Coastal Access Act 2009(g);
- “the access and rights of way plans” means the plans listed in Part 1 of Schedule 2 (plans) and certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;
- “authorised development” means the development and associated development, described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;
- “the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “carriageway” has the same meaning as in the 1980 Act (interpretation);
- “compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act (notice of authorisation of compulsory acquisition);
- “the design drawings” means the drawings and sections listed in Part 2 of Schedule 2 (plans) and certified as the design drawings certified by the Secretary of State for the purposes of this Order;
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

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- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.
- (c) 1984 c. 27.
- (d) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (f) 2008 c. 29.
- (g) 2009 c. 23.

“environmental statement” means the environmental statement as submitted by National Grid Electricity Transmission plc to support its application for development consent;

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

“the land plans” means the plans listed in Part 3 of Schedule 2 (plans) and certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation) and shown on the works plans;

“maintain” includes to inspect, repair, adjust, alter, dismantle, remove, reconstruct, replace or relay the authorised development, but not so as to vary from the description of the authorised development in Schedule 1 and any derivative of “maintain” is to be construed accordingly;

“National Grid” means National Grid Electricity Transmission plc (registered company number 2366977)

“operational use” occurs when that part of the authorised development first transmits electricity at either 132kV or 400 kV;

“the Order land” means the land shown on the land plans which is within the Order limits and described in the book of reference;

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

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

“public rights of navigation plan” means the plan listed in Part 4 of Schedule 2 (plans) and certified as the public right of navigation plan by the Secretary of State for the purposes of this Order;

“relevant highway authority” means, in any given provision of this Order, the local highway authority for the area to which the provision relates;

“relevant local authority” means, in any given provision of this Order, the local authority for the area to which the provision relates;

“relevant planning authority” means, in any given provision of this Order, the local planning authority for the area to which the provision relates;

“relevant street authority” means, in any given provision of this Order, the local highway authority for the area to which the provision relates;

“the sections” means the sections included as part of the design drawings;

“the special category land and crown land plans” means the plans listed in Part 5 of Schedule 2 (plans) and certified as the special category land and crown land plans by the Secretary of State for the purposes of this Order;

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

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

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

“the temporary construction works” means Work Nos. 2D and 3B;

“traffic” has the same meaning as in section 239(1) of the 1980 Act;

“the traffic regulation plans” means the plans listed in Part 6 of Schedule 2 (plans) and certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“the trees and hedges to be removed or affected plans” means the plans listed in Part 7 of Schedule 2 (plans) and certified as the trees and hedges to be removed or affected plans by the Secretary of State for the purposes of this Order;

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(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

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

“UK Power Networks” means United Kingdom Power Networks plc (registered company number [        ]);

“the UK Power Networks works” means Works Nos. [        ] described in Schedule 1 (authorised development) and any associated development in connection with those works;

“the undertaker”—

(a) in relation to the authorised development, means National Grid; and

(b) in relation to the UK Power Networks works, includes UK Power Networks;

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

“the works plans” means the plans listed in Part 8 of Schedule 2 (plans) and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictions are references to restrictions over land which interfere with the interests or rights of another and are for the benefit of land which is acquired, or rights over which are acquired, under this Order.

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

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

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

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

## PART 2

### PRINCIPAL POWERS

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

**3.—**(1) Subject to the provisions of this Order and to the requirements in Schedule 3 (requirements) to this Order—

(a) National Grid is granted development consent for the authorised development; and

(b) UK Power Networks is granted development consent for the UK Power Networks works.

(2) National Grid may install and keep installed the above-ground electric lines and underground cables included in the authorised development.

(3) UK Power Networks may install and keep installed the above-ground electric lines and underground cables included in the UK Power Networks works.

(4) National Grid may operate and use the electric line and any other elements of the authorised development (excluding the UK Power Networks works) as part of the high-voltage electricity transmission system in England and Wales.

(5) UK Power Networks may operate and use the electric line and any other elements of the UK Power Networks works as part of the electricity distribution network in England and Wales.

(6) Subject to article 5 (limits of deviation) the authorised development must be constructed and installed in the lines and situations shown on the works plans and in general accordance with the levels shown on the sections.

## **Maintenance of authorised development**

4.—(1) National Grid may at any time maintain the authorised development (excluding the UK Power Networks works), except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) UK Power Networks may at any time maintain the UK Power Networks works, except to the extent that this Order or an agreement made under this Order provides otherwise.

## **Limits of deviation**

5. In carrying out the authorised development for which they are granted development consent by article 3(1) (development consent etc. granted by the Order) the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans within the limits of deviation relating to that work shown on those plans and carry out construction activities for the purposes of the authorised development anywhere within the Order limits; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
  - (i) to any extent not exceeding 4 metres upwards; or
  - (ii) to any extent downwards as may be found to be necessary or convenient.

## **Benefit of Order**

6.—(1) Subject to article 3 (Development Consent granted by Order), article 4 (maintenance of the authorised development) article 7 (consent to transfer benefit of Order), paragraph (5) of article 23 (compulsory acquisition of rights), article 25 (extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession), article 30 (temporary use of land by National Grid) and article 31 (temporary use of land by UK Power Networks), and the remaining provisions of this article, the provisions of this Order have effect for the benefit of—

- (a) National Grid in respect of the authorised development; or
- (b) UK Power Networks in respect of the UK Power Networks works.

(2) UK Power Networks may not carry out the UK Power Networks works under article 3(1)(b) (development consent etc. granted by the Order) except in accordance with the written consent of National Grid, which may be granted subject to reasonable conditions.

(3) If UK Power Networks fails to carry out the UK Power Networks works in accordance with National Grid's consent, National Grid may give UK Power Networks and the Secretary of State notice that National Grid intends to carry out the UK Power Networks works under article 3(1)(a) from a date specified in the notice.

(4) On the date specified in the notice, UK Power Networks is to cease to have the benefit of article 3(1)(b).

(5) The exercise by UK Power Networks of any benefits or rights conferred on it by this Order is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(6) Paragraph (1) does not apply where the consent granted by this Order is expressed to be for the benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

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

7.—(1) National Grid, and UK Power Networks in relation to the UK Power Networks works, may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provision of this Order and such related statutory rights as may be agreed between National Grid or UK Power Networks and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between National Grid or UK Power Networks and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to National Grid or UK Power Networks (as the case may be), except in paragraph (3), will include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by National Grid or UK Power Networks.

(4) Any rights or benefits in relation to the UK Power Networks works that are transferred or granted by UK Power Networks under paragraph (1) are subject to paragraphs (2) to (4) of article 6 (benefit of Order) as if they had remained exercisable by UK Power Networks.

### **Application of the 1990 Act**

**8.**—(1) This article applies where the land is used for the temporary construction works.

(2) Where this article applies, section 57(2) of the 1990 Act (planning permission required for development) applies as if the development consent granted by this Order were planning permission granted for a limited period.

### **Application of the Community Infrastructure Levy**

**9.**—(1) The Community Infrastructure Levy Regulations 2010 apply to the authorised development as if regulation 5(2) of those Regulations (meaning of “planning permission”) referred to development consent which is deemed to be granted for a limited period by an order made under section 114(1)(a) of the 2008 Act (grant or refusal of development consent) rather than to planning permission which is granted for a limited period.

(2) Development consent is deemed to be granted for a limited period for the temporary construction works and any other temporary buildings or works authorised by this Order.

## **PART 3 STREETS**

### **Street works**

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter upon so much of any of the streets specified in column (2) of Schedule 5 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel within or under it;
- (b) tunnel or bore under the street;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in the street;
- (e) maintain apparatus in the street or change its position;
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d), and (e).

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

(3) The powers conferred in paragraphs (1) and (2) are without limitation on the powers of the undertaker under the Electricity Act 1989(a).

(4) In this article “apparatus” has the meaning given in Part 3 of the 1991 Act.

### **Application of the 1991 Act**

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

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of the 1991 Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the relevant highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary stopping up of streets and public rights of way) and the carrying out of street works under article 10 (street works) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- section 54 (advance notice of certain works), subject to paragraph (4);
- section 55 (notice of starting date of works), subject to paragraph (4);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 71 (materials, workmanship and standard of reinstatement);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned in paragraph (3).

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (1) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

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

**12.**—(1) The undertaker may for the purposes of carrying out the authorised development permanently or temporarily alter the layout of or carry out any works in the street specified in column (1) of Part 1 or 2 of Schedule 6 (streets subject to alteration of layout) in the manner specified in relation to that street in column (2).

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(a) 1989 c. 29.

(2) Without limitation on the specific powers conferred by paragraph (1), but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining the authorised development, permanently or temporarily alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street;
- (d) make and maintain crossovers and passing places;
- (e) carry out works for the provision or alteration of parking places, loading bays and cycle tracks; and
- (f) execute any works to provide or improve sight lines required by the highway authority.

(3) Before reinstating any street which has been temporarily altered under this article, the undertaker must restore the street to the reasonable satisfaction of the street authority.

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

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Temporary stopping up of streets and public rights of way**

**13.—**(1) During and for the purposes of carrying out the authorised development, the undertaker may temporarily stop up, alter or divert any street or public right of way shown on the access and rights of way plans or within the Order limits and may for any reasonable time—

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

(2) Without limitation on the scope of paragraph (1), the undertaker may use as a temporary working site any street or public right of way which has been temporarily stopped up, altered or diverted under the powers conferred by this article.

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

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets or public rights of way specified in columns (1) and (2) of Parts 1 and 2 of Schedule 7 (streets or public rights of way to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column (3) of that Schedule, and, if it does so in respect of a street or public right of way specified in Part 1 of Schedule 7, may provide the temporary diversion as specified in column (4) of that Part.

(5) The undertaker must not temporarily stop up, alter or divert—

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

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

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

### **Access to works**

**14.**—(1) The undertaker may, for the purposes of the authorised development and with the consent of the relevant planning authority, after consultation with the relevant highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a relevant planning authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Agreements with street authorities**

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

- (a) the construction of any new street including any structure carrying the street over or under an electric line authorised by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under an electric line authorised by this Order;
- (c) any stopping up, alteration or diversion of a street authorised by this Order; or
- (d) the carrying out in the street of any of the works referred to in article 10 (street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

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

## **PART 4**

### **SUPPLEMENTAL POWERS**

#### **Discharge of water**

**16.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

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

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(a) 1991 c. 56. Section 106 was amended by the Water Act 2003 (c. 37), sections 36(2) and 99 subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641. There are other amendments to section 106 which are not relevant to this Order.

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.
- (6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(a).
- (8) This article does not permit any activity listed in paragraph 3(1) of Schedule 21 to the Environmental Permitting (England and Wales) Regulations 2010.
- (9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person is deemed to have granted consent or given approval, as the case may be.
- (10) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(b), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;
  - (b) “main river” has the same meaning as in the Water Resources Act 1991(c); and
  - (c) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those regulations.

### **Protective work to buildings**

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

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first brought into operational use.

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

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

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

(5) Before exercising—

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(a) S.I. 2010/675.  
 (b) 1964 c. 40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 9(1) and (2).  
 (c) 1991 c. 57.

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 51 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first brought into operational use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

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

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

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

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

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

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

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

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days' notice has been served on every owner and occupier of the land.

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

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
  - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes may be made under this article—
- (a) on land located within the highway boundary without the consent of the relevant highway authority; or
  - (b) in a private street without the consent of the street authority.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).
- (6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—
- (a) under paragraph (4) (a) in the case of a highway authority; or
  - (b) under paragraph (4)(b) in the case of a street authority,
- that authority is deemed to have granted consent.

## PART 5

### POWERS OF ACQUISITION

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

**19.** The undertaker (but not UK Power Networks) may acquire compulsorily so much of the Order land specified in columns (1) and (2) of Schedule 11 (land which may be compulsorily acquired) as is required for the construction, operation and maintenance of the authorised development or is incidental to it or required to facilitate it.

#### **Statutory authority to override easements and other rights**

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

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

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

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

caused by the carrying out or use of development authorised by this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

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

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

### **Compulsory acquisition of land – incorporation of the mineral code**

**21.** Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(a) (minerals) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” there is substituted “the undertaker”.

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

**22.—**(1) After the end of the period of 8 years beginning on the day on which the Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).

(2) The authority conferred by article 30 (temporary use of land by National Grid) and article 31 (temporary use of land by UK Power Networks) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**23.—**(1) The undertaker may acquire compulsorily the rights, and impose the restrictions, over the Order land, described in the book of reference, by creating them as well as by acquiring rights and the benefits of restrictions already in existence.

(2) This article is subject to article 19 (compulsory acquisition of land), article 30 (temporary use of land by National Grid) and article 31 (temporary use of land by UK Power Networks).

(3) Subject to section 8 of the 1965 Act (provisions as to divided land) as substituted by paragraph 5 of Schedule 10 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over land or imposes a restriction under paragraph (1) the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 10 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or imposes a restriction.

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

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

(7) No interest in Crown land may be acquired pursuant to this Order unless the appropriate Crown authority consents to such acquisition.

(8) In this article, “Crown land” and “the appropriate Crown authority” have the same meaning as that given in section 227 (“Crown land” and “the appropriate Crown authority”) of the 2008 Act.

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(a) 1981 c. 67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c. 21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c. 48). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to the 1981 Act which are not relevant to this Order.

## **Extinguishment and suspension of private rights**

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order, are extinguished on the commencement of any activity authorised by this Order which interferes with or breaches such rights or such restrictive covenants.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition of rights or the imposition of restrictions under the Order shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right acquired or the burden of the restriction imposed—

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

whichever is the earliest.

(4) Subject to the provisions of this article and article 25 (extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession), all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 35 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) and (5) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made, in so far as it relates to the authorised development, at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested, belongs or benefits.

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

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

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

(9) Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land (including any land forming part of a common, open space or fuel or field garden allotment) and adversely affecting other land, including any natural right to support.

### **Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession**

**25.**—(1) This article applies to any Order land specified in Schedule 8 (statutory authority to extinguish private rights over land subject to temporary possession) of which the undertaker takes temporary possession under article 30 (temporary use of land by National Grid) or UK Power Networks takes temporary possession under article 31 (temporary use of land by UK Power Networks).

(2) All private rights or restrictive covenants in relation to apparatus removed from any land to which this article applies pursuant to Schedule 1 (authorised development) are extinguished from the date on which National Grid or UK Power Networks give up temporary possession of that land under article 30(5) and 30(6) or 31(5) and 31(6), as the case may be.

(3) The extinguishment of rights by paragraph (2) does not give rise to any cause of action relating to the presence on or in the land of any foundations referred to in article 30(5)(c) and 30(6)(c) or 31(5)(c) and 31(6)(c) (National Grid and UK Power Networks not required to remove foundations when giving up temporary possession).

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

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

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

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

(8) References to the 1965 Act in the 1981 Act are construed as references to the 1965 Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil or air space only**

27.—(1) The undertaker may compulsorily acquire so much of, or such rights in, the subsoil of, or the airspace over, the land referred to in article 19 (compulsory acquisition of land) and article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 28 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Acquisition of part of certain properties**

28.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat must be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat must be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the

additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat must be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where by reason of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

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

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

### **Temporary use of land by National Grid**

**30.**—(1) National Grid may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

- (i) so much of the land specified in column (1) of Part 1 of Schedule 12 (land of which temporary possession may be taken) to exercise the powers described in the book of reference and for the purpose specified in relation to that land in column (2) of Part 1

of that Schedule relating to the part of the authorised development specified in column (3) of Part 1 of that Schedule; and

- (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any electric line, electrical plant, buildings, structures, pylons, apparatus and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (2) of Part 1 of Schedule 12, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land referred to in paragraph 1(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Part 1 of Schedule 12, or
- (b) in the case of land referred to in paragraph 1(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) The undertaker must provide the owner of any land of which temporary possession has been taken under paragraph (3) with written notice of the date of completion of the work for which temporary possession was taken within 28 days of the completion of those works.

(5) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(i), the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker is not required to—

- (a) replace a building, structure, electric line, electrical plant or pylon removed under this article;
- (b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the element of works shown in column (4) of Part 1 of Schedule 12 is concerned;
- (c) remove any foundations below 1.5 metres which had been placed in that land to support pylons and electric lines constructed upon that foundation; or
- (d) remove any pylons or electric lines or underground cables constructed or installed on, over, under, or in that land as part of the authorised development.

(6) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(ii), unless otherwise agreed by the owners of the land, the undertaker shall either acquire the land or the right on, over, or in the land in accordance with the provisions of paragraph (3)(b) or remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building, structure, electric line, electrical plant or pylon removed under this article;
- (b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the element of works shown in column (4) of Part 1 of Schedule 11 is concerned;
- (c) remove any foundations below 1.5 metres which had been placed in that land to support pylons and electric lines constructed upon that foundation; or
- (d) remove any pylons or electric lines or underground cables constructed or installed on, over, under, or in that land as part of the authorised development.

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

(8) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(10) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights or imposing restrictions over any part of that land under article 23 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil or of air space over (or rights in the subsoil or of air space over) that land under article 27 (acquisition of subsoil or air space only).

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

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

(13) Nothing in this article prevents the undertaker from taking temporary possession more than once in relation to any land specified in Part 1 of Schedule 12.

### **Temporary use of land by UK Power Networks**

**31.**—(1) UK Power Networks may, in connection with the carrying out of the UK Power Networks works—

- (a) enter on and take temporary possession of—
  - (i) so much of the land specified in column (1) of Part 2 of Schedule 12 (land of which temporary possession may be taken) to exercise the powers described in the book of reference and for the purpose specified in relation to that land in column (2) of Part 2 of that Schedule relating to the part of the authorised development specified in column (3) of Part 2 of that Schedule; and
  - (ii) any of the Order land in respect of the UK Power Networks works in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any electric lines, electrical plant, buildings, structures, pylons, apparatus and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (2) of Part 2 of Schedule 12.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article UK Power Networks must serve notice of the intended entry on the owners and occupiers of the land.

(3) UK Power Networks may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land referred to in paragraph 1(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Part 2 of Schedule 12, or

- (b) in the case of land referred to in paragraph 1(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) UK Power Networks must provide the owner of any land of which temporary possession has been taken under paragraph (3) with written notice of the date of completion of the work for which temporary possession was taken within 28 days of the completion of those works.

(5) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(i), UK Power Networks must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but UK Power Networks is not required to—

- (a) replace a building, structure, electric line, electrical plant or pylon removed under this article;
- (b) remove any pylons, electric lines or underground cables constructed or installed on, over, under or in that land as part of the UK Power Networks works;
- (c) remove any foundations below 1.5 metres which had been placed in that land to support pylons and electric lines constructed upon that foundation; or
- (d) restore the land on which any works have been carried out under paragraph 1(d) insofar as the element of works shown in column (4) of Part 2 of Schedule 12 is concerned.

(6) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(ii), unless otherwise agreed by the owners of the land, UK Power Networks shall either acquire the right on, over, or in the land in accordance with the provisions of paragraph (3)(b) or remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but UK Power Networks is not required to—

- (a) replace a building, structure, electric line, electrical plant or pylon removed under this article;
- (b) remove any pylons, electric lines or underground cables constructed or installed on, over, under or in that land as part of the UK Power Networks works;
- (c) remove any foundations below 1.5 metres which had been placed in that land to support pylons and electric lines constructed upon that foundation; or
- (d) restore the land on which any works have been carried out under paragraph 1(d) insofar as the element of works shown in column (4) of Part 2 of Schedule 12 is concerned.

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

(8) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(10) UK Power Networks may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that UK Power Networks is not precluded from—

- (a) acquiring new rights or imposing restrictions over any part of that land under article 23 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil or of airspace over (or rights in the subsoil or of air space over) that land under article 27 (acquisition of subsoil or airspace only).

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

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

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

(13) Nothing in this article prevents UK Power Networks from taking temporary possession more than once in relation to any land specified in Part 2 of Schedule 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period of five years beginning with the date on which that part of the authorised development is brought into operational use.

### **Special category land**

**33.**—(1) So much of the special category land as shall be required for the purposes of the exercising by the undertaker of the Order rights shall be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 23 (compulsory acquisition of rights), article 30 (temporary use of land by National Grid) and article 31 (temporary use of land by WPD); and

“the special category land” means the land identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the plan entitled “special category land and crown land plans”.

### **Statutory undertakers**

**34.** Subject to the provisions of Schedule 15 (Protective Provisions), the undertaker may—

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

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

**35.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 34 any person who is—

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

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

(3) In this paragraph—

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

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

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### **Deemed marine licence**

**36.** The undertaker is deemed to have been granted a licence under Part 4 Chapter 1 of the 2009 Act to carry out the works and make the deposits described in Schedule 9 (deemed marine licence), subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

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

**37.—**(1) This article applies to—

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

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

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for purposes of the 1990 Act**

**38.** Development consent granted by this Order must be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

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

**39.—**(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order must be made, and no fine must be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with any scheme of monitoring and attenuation of noise agreed with the relevant local authority; or

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(a) 1990 c. 43. Section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993, c. 40, section 106 of, and Schedule 17 to, the Environment Act 1995, c. 25 and section 103 of the Clean Neighbourhoods and Environment Act 2005, c. 16. There are other amendments to this Act which are not relevant to this Order.

(b) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c. 25. There are other amendments to the 1974 Act which are not relevant to this Order.

- (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Temporary closure of, and works in, the river Stour**

**40.**—(1) The undertaker may, in connection with the construction of the authorised development temporarily interfere with the relevant part of the river.

(2) Without prejudice to the powers conferred by paragraph (1) but subject to paragraphs (3) and (4) the undertaker may, in connection with the construction of the authorised development—

- (a) temporarily moor or anchor barges or other vessels or craft in the relevant part of the river and may load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials in connection with the construction of the authorised development; and
- (b) on grounds of health and safety only, temporarily close to navigation the relevant part of the river.

(3) The power conferred by paragraph (1) shall be exercised in such a way which secures—

- (a) that no more of the relevant part of the river is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant part of the river becomes necessary, all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(4) Any person who suffers loss as a result of the suspension of any private right of navigation under this article shall be entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) In this article, “the relevant part of the river” means so much of the river Stour as is shown on [ ] of the public rights of navigation plan.

### **Traffic regulation**

**41.**—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may at any time, for the purposes of the construction of the authorised development—

- (a) prohibit vehicular access, prohibit waiting of vehicles and regulate vehicular speed by imposing speed restrictions on vehicles in the manner specified in Part 1 of Schedule 13 (traffic regulation) on those roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule;
- (b) prohibit vehicular access and prohibit waiting of vehicles in the manner specified in Part 2 of Schedule 13 on those roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule; and
- (c) prohibit waiting of vehicles in the manner specified in Part 3 of Schedule 13 on the roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road

concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to when the authorised development first becomes operational—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The undertaker must not exercise the powers of paragraphs (1) and (2) unless it has—

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

(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (2)—

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 13 (traffic regulation) to which the prohibition, restriction or other provision is subject; and

- (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004<sup>(a)</sup> (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time prior to that part of the authorised development being brought into operational use.

(6) Before complying with the provisions of paragraph (3) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.

(7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(8) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

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

**42.**—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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(a) 2004 c. 18.

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) Development consent granted by this Order shall be treated as planning permission pursuant to Part 3 of the 1990 Act for the purposes of Regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012(a).

### **Trees subject to tree preservation orders**

**43.**—(1) The undertaker may fell or lop any tree described in Schedule 14 (trees subject to Tree Preservation Orders) and identified on the trees and hedges to be removed or affected plans, or cut back its roots, if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

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

(2) Paragraph (1) shall also extend to any other tree within the Order limits subject to a preservation order which was made before this Order comes into force.

(3) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any damage arising from such activity; and
- (b) the duty contained in section 206 (1) of the 1990 Act (replacement of trees) shall not apply.

(4) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

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

### **Protection of interests**

**44.** Schedule 15 (protective provisions) to the Order has effect.

### **Certification of plans etc**

**45.**—(1) National Grid must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the access and rights of way plans;
- (c) the design drawings;
- (d) the land plans;
- (e) the special category land and crown land plans;

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(a) S.I. 2012/605.

- (f) the traffic regulation plans;
- (g) the trees and hedges to be removed or affected plans; and
- (h) the works plans;

for certification that they are true copies of the documents referred to in this Order.

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

### **Service of notices**

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

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

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

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

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

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

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

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

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

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

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

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(a) 1978 c. 30.

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

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

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

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

### **Procedure regarding certain approvals etc.**

**47.**—(1) Where an application or request is submitted to the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order such consent, agreement or approval, if given, must be given in writing.

(2) Schedule 4 (discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements set out in Schedule 3, and any document referred to in any requirement set out in Schedule 3.

(3) The procedure set out in paragraphs 3, 4 and 5 of Schedule 4 (discharge of requirements) has effect in relation to any other consent, agreement or approval required under this Order where such consent, agreement or approval is granted subject to any condition to which the undertaker objects, or is refused or is withheld.

### **Application and modification of legislative provisions**

**48.** Subject to the modifications set out in Schedule 10 (modification of compensation and compulsory purchase enactments for creation of new rights) the enactments for the time being in force with respect to compensation for the compulsory purchase of land apply in the case of the compulsory acquisition under this Order of a right by the creation of a new right as they apply to compensation for the compulsory purchase of land and interests in land.

### **Amendment of local legislation**

**49.**—(1) The local enactments specified in Part 1 of Schedule 16 (amendment of local legislation), and any byelaws or other provisions made under any of those enactments, and the local byelaws specified in Part 2 of that Schedule are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order.

(2) In particular, a power conferred by this Order may be exercised despite, and without having regard to, a provision made by or virtue of a specified enactment or byelaw, or any other provision of local application, that—

- (a) requires or permits a specified road, path, passage, bridge, parapet fence or other place or structure to be kept open or maintained generally in a specified manner;
- (b) prohibits or restricts (or imposes conditions or penalties on or in relation to) the obstruction or removal of, or the causing of damage to, a specified place or structure (or class of places or structures);
- (c) prohibits or restricts (or imposes conditions or penalties on or in relation to) the erection of structures, or the undertaking of other works, in a specified place or structure (or class of places or structures);
- (d) permits or requires a specified place or structure to be closed;

- (e) makes provision about the conduct of persons using a specified walkway or other place or structure (or class of places or structures) whether by prohibiting or restricting movement (of persons , vehicles or animals) or otherwise;
- (f) specifies a minimum or maximum depth for, or otherwise restricts or imposes conditions in relation to, the laying of cables or the carrying out of any other works;
- (g) prohibits the laying of cables or the carrying out of any other works generally or without the consent of a specified person;
- (h) prohibits the installation of wires, ducts, and conductors or the carrying out of any other works generally or without the consent of a specified person;
- (i) makes provision about the construction or maintenance of, or any other matter relating to, installation of wires, cables, ducts, pipes and conductors; or
- (j) in any other way would or might apply in relation to anything done, or omitted to be done, in the exercise of a power conferred by this Order.

(3) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken;
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

**No double recovery**

**50.** Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

**Arbitration**

**51.** Subject to article 47 (procedures regarding certain approvals, etc.) and except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Energy and Climate Change

Date

*Name*  
Designation  
Department

# SCHEDULES

## SCHEDULE 1

Articles 2 and 3

### AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 and 16 of the 2008 Act and associated development within the meaning of section 115(2) of the 2008 Act comprising—

#### 400kV OVERHEAD LINE

##### **In the City of Canterbury and the District of Thanet and the District of Dover**

##### **Work No.1 — PC route Canterbury North substation to Richborough substation**

Works to construct a 400kV overhead electricity line of approximately 20.7km in length commencing at the Canterbury PC Gantry at Canterbury North 400kV substation as shown on Works Plan Sheet 1, and terminating at the Richborough PC Gantry at Richborough 400kV substation as shown on Works Plan Sheet 17. The overhead line consists of 62 pylons and the installation of conductors, insulators and fittings.

##### **In the City of Canterbury**

##### **Work No 2 — Temporary site compound**

Works to construct a temporary site compound, at the location shown on Works Plan Sheet 1 to include—

- (a) temporary car parking, hard standing and roadways;
- (b) temporary offices and staff welfare portable cabins;
- (c) temporary materials, tools and fuel storage areas;
- (d) temporary storage of plant and equipment;
- (e) wheel cleaning facilities;
- (f) security fencing;
- (g) construction and security lighting.

##### **Work No 3 — Temporary site compound**

Works to construct a temporary site compound, at the location shown on Works Plan Sheet 4 to include—

- (a) temporary car parking, hard standing and roadways;
- (b) temporary offices and staff welfare portable cabins;
- (c) temporary materials, tools and fuel storage areas;
- (d) temporary storage of plant and equipment;
- (e) wheel cleaning facilities;
- (f) security fencing;
- (g) construction and security lighting.

## UK Power Networks 123kV WORKS

### **In the City of Canterbury**

#### **Work No 4A — PX route diversion**

Works to allow the construction and installation of two single circuit 132kV overhead electric lines supported by wooden poles and the installation of conductors, insulators and fittings between pylons PX8 and PX9, as shown on Works Plan Sheet 2.

#### **Work No 4B – PX route diversion**

Works to allow the construction and installation of two single circuit 132kV overhead electric lines supported by wooden poles and the installation of conductors, insulators and fittings between pylons PX44 and PX46. The removal of existing pylon PX45 and associated conductors, insulators and fittings as shown on Works Plan Sheet 10.

### **In the District of Dover**

#### **Work No.4C — PX route diversion**

Works to allow the construction and installation of two single circuit 132kV overhead electric lines supported by wooden poles and the installation of conductors, insulators and fittings between pylons PX72 and PX75. The removal of existing pylons PX73 and PX74 and associated conductors, insulators and fittings as shown on Works Plan Sheets 16 and 17.

#### **Work No.5A — Temporary diversion of part of the PY route.**

Works to allow the temporary diversion of part of the 132kV overhead electric line as shown on Works Plan Sheets 16 and 17 comprising the construction and installation of two single circuit 132kV overhead electric lines supported by wooden poles and the installation of conductors, insulators and fittings between pylons PY6 and PY3.

#### **Work No.5B — Undergrounding of part of the PY route**

Works to allow the undergrounding of part of the 132kV PY route as shown on Works Plan Sheets 16 and 17 comprising the installation of 600m of underground 132kV electric cable and fibre optic cables between new cable sealing end pylons PY5R and PY4R and the installation of conductors, insulators and fittings between PY6 and PY5R and between PY4R and PY3.

#### **Work No.5C – Removal of part of the PY route**

Works to allow the removal of part of the 132kV PY route as shown on Works Plan Sheets 16 and 17 comprising the removal of existing pylons PY5 and PY4 and the two single circuit 132kV overhead electric line temporary wooden pole diversion between pylons PY6 and PY3 and all associated conductors, insulators and fittings.

### **In the City of Canterbury**

#### **Work No.6A — PX route removal**

Works to allow the removal of 1.3km of the 132kV PX route overhead electric line commencing at the Canterbury South 132kV substation PX connection and terminating at Cable Sealing End pylon PX6, including the removal of 7 pylons and associated conductors, insulators and fittings, as shown on Works Plan Sheet 1.

**Work No.6B — PX route removal**

Works to allow the removal of 9.7km of the 132kV PX route overhead electric line commencing at Cable Sealing End pylon PX7 as shown on Works Plan Sheet 2, and terminating at pylon PX44 as shown on Works Plan Sheet 10 to include the removal of the two single circuit 132kV overhead electric lines between pylons PX8 and PX9 as shown on Works Plan Sheet 2 including the removal of 37 pylons, the wooden poles and associated conductors, insulators and fittings.

**Work No.6C — PX route removal**

Works to allow the removal of the two single circuit 132kV overhead lines commencing at pylon PX44 and terminating at pylon PX46 as shown on Works Plan Sheet 10, including the removal of the wooden poles and associated conductors, insulators and fittings.

**In the City of Canterbury, District of Thanet and the District of Dover**

**Work No.6D — PX route removal**

Works to allow the removal of 7.3km of the 132kV PX route overhead electric line commencing at pylon PX46 as shown on Works Plan Sheet 10 and terminating at pylon PX72 as shown on Works Plan Sheet 16 including the removal of 27 pylons and associated conductors, insulators and fittings.

**In the District of Dover**

**Work No.6E — PX route removal**

Works to allow the removal of the two single circuit 132kV overhead lines commencing at pylon PX72 as shown on Works Plan Sheet 16 and terminating at pylon PX75 as shown on Works Plan Sheet 17, including the removal of the wooden poles and associated conductors, insulators and fittings.

**Work No.6F PX route removal**

Works to allow the removal of 0.8km of the 132kV PX route overhead electric line commencing at pylon PX75 and terminating at the Richborough 132kV substation PX connection as shown on Works Plan Sheet 17 including the removal of 4 pylons and associated conductors, insulators and fittings.

**ASSOCIATED DEVELOPMENT**

Such associated development within the Order limits as may be necessary or expedient for the purposes of or in connection with the construction of the above Work Nos. or any of them consisting of—

- (a) ramps, means of access, footpaths, bridleways, trackways and pontoons;
- (b) embankment, bridge, aprons, abutments, foundations, retaining walls, drainage, wing walls, fencing and culverts;
- (c) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (d) works to alter the course of, or otherwise interfere with a watercourse;
- (e) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (f) works for the benefit or protection of land affected by the authorised development;

- (g) works required for the strengthening, improvement, maintenance, or reconstruction of any streets;
- (h) works to alter or remove road furniture;
- (i) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling);
- (j) establishment of site construction compounds, temporary offices, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction and security lighting and haulage roads;
- (k) installation of wires, cables, ducts, pipes and conductors;
- (l) such other works, including scaffolding, working sites storage areas, and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which do not give rise to any materially different environmental effects from those assessed in the Environmental Statement; and
- (m) such other works as may be necessary or expedient for the purposes of or in connection with the maintenance of the authorised development and which do not give rise to any materially different environmental effects from those assessed in the Environmental Statement.

SCHEDULE 2

Article 2

PLANS

PLANS AND DRAWINGS

<i>Drawing Title</i>	<i>Drawing Number</i>	<i>Revision</i>

PART 1

ACCESS AND RIGHTS OF WAY PLANS

<i>Drawing Title</i>	<i>Drawing Number</i>	<i>Revision</i>

PART 2

DESIGN DRAWINGS

<i>Drawing Title</i>	<i>Drawing Number</i>	<i>Revision</i>

PART 3

LAND PLANS

<i>Drawing Title</i>	<i>Drawing Number</i>	<i>Revision</i>

PART 4

[PUBLIC RIGHTS OF NAVIGATION PLAN]

<i>Drawing Title</i>	<i>Drawing Number</i>	<i>Revision</i>

PART 5

SPECIAL CATEGORY LAND AND CROWN LAND PLANS

<i>Drawing Title</i>	<i>Drawing Number</i>	<i>Revision</i>

PART 6

TRAFFIC REGULATION PLANS

<i>Drawing Title</i>	<i>Drawing Number</i>	<i>Revision</i>

PART 7

TREES AND HEDGES TO BE REMOVED OR AFFECTED PLANS

<i>Drawing Title</i>	<i>Drawing Number</i>	<i>Revision</i>

PART 8

WORKS PLANS

<i>Drawing Title</i>	<i>Drawing Number</i>	<i>Revision</i>

## SCHEDULE 3

Articles 3 and 47

### REQUIREMENTS

#### *Interpretation*

1.—(1) In this Schedule unless the context requires otherwise—

“CEMP” means the Construction Environmental Management Plan which incorporates the findings and recommendations of the environmental statement, certified under article 45 (certification of plans etc), a draft of which is included at volume [ ] of the environmental statement;

“commence” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), comprised in or carried out for the purposes of the authorised development, but does not include any demolition, site clearance, devegetation, remediation, environmental (including archaeological) investigation, site or soil survey, erection of contractors’ work compound, erection of site office, erection of fencing to site boundaries or marking out of site boundaries;

“the relevant highway authority” means, in any given requirement, the local highway authority for the area to which the requirement relates;

“the relevant planning authority” means, in any given requirement, the local planning authority for the area to which the requirement relates; and

“stage” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the relevant planning authority pursuant to requirement 4.

(2) Where under any of the requirements the approval or agreement of the relevant highway authority or the relevant planning authority is required, that approval must be given in writing.

(3) Where an approval is required under the terms of any requirement or a document referred to in a requirement, or any requirement specifies “unless otherwise approved” or “unless otherwise agreed” by the relevant highway authority or the relevant planning authority such approval or agreement may only be given in relation to minor or immaterial changes where it has been demonstrated to the satisfaction of the relevant highway authority or the relevant planning authority that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(4) Where any requirement which requires the authorised development to be carried out in general accordance with the details approved by the relevant highway authority or by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved in writing by the relevant highway authority or by the relevant planning authority.

#### *Time Limits*

2. The authorised development must be commenced within 8 years of the date of this Order.

#### *In accordance with approved details*

3. The authorised development shall be carried out in general accordance with the design drawings unless otherwise agreed by the relevant planning authority following consultation with the relevant highway authority.

### *Stages of authorised development*

4. No authorised development may commence until a written scheme setting out all the stages of the authorised development has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority

### *Construction Environmental Management Plan*

5.—(1) All construction works for the authorised development must be carried out in general accordance with the CEMP, unless otherwise agreed with the relevant planning authority.

(2) The CEMP, which specifies measures to be used to minimise the impacts of construction works, incorporates the following plans and strategies—

- (a) [ ]
- (b) [ ]
- (c) [...]

(3) Any works carried out pursuant to the plans, scheme and strategy referred to in sub-paragraph (2) must be carried out in general accordance with the approved plan, scheme or strategy unless otherwise agreed with the relevant planning authority.

(4) The plans, scheme and strategy referred to in sub-paragraph (2) must be implemented as approved unless otherwise agreed with the relevant planning authority

### *Approval and implementation of construction mitigation plans*

6.—(1) No stage of the authorised development may commence until, for that stage, the following plans and scheme to minimise the impacts of construction works have been submitted to and approved by the relevant planning authority—

- (a) [ ];
- (b) [ ];

(2) The construction works for each stage of the authorised development must be carried out in general accordance with the approved plans and scheme referred to in sub-paragraph (1), unless otherwise agreed with the relevant planning authority.

### *Construction Traffic Management Plan*

7.(1) No stage of the authorised development may commence until a Construction Traffic Management Plan has been submitted to and approved by the relevant highway authority.

(2) The Construction Traffic Management Plan, which specifies measures to be used to minimise the impacts of construction works will include the following plans and strategies:—

- (a) Management measures for construction traffic
- (b) Construction traffic routeing strategy
- (c) Temporary construction signage plans
- (d) Temporary traffic management measures
- (e) Traffic incident management
- (f) Travel plan

(3) The construction works for each stage of the authorised development must be carried out in general accordance with the approved plans and scheme referred to in sub-paragraph (1), unless otherwise agreed with the relevant highway authority.

### *Construction hours*

**8.**—(1) Subject to sub-paragraphs (2) and (3) construction work must only take place between [ ] Mondays to Saturdays and between [ ] on Sundays (the core working hours), unless otherwise approved by the relevant planning authority.

(2) Piling operations must only take place between [ ] Mondays to Fridays and [ ] on Saturdays, unless otherwise agreed by the relevant planning authority.

(3) The following operations may take place outside the core working hours referred to in sub-paragraph (1)—

- (a) the jointing of underground cables;
- (b) the installation and removal of protective netting across highways, railways lines or watercourses;
- (c) the completion of operations commenced during the core working hours which cannot safely be stopped;
- (d) start up and close down activities up to 1 hour either side of core working hours;
- (e) security monitoring; and
- (f) the testing or commissioning of any electrical plant installed as part of the authorised development.

### *Provision of landscaping*

**9.** The landscaping works (ref) for—

- (a) [...]

must be carried out in accordance with the plans listed above and the specification set out at [...] unless otherwise agreed with the relevant planning authority.

### *Replacement planting*

**10.**—(1) Unless otherwise agreed with the relevant planning authority, no stage of the authorised development may commence until, for that stage, a scheme for the planting of trees, groups of trees and hedgerows to replace those to be removed during that stage that accords with [ ] has been submitted to and approved by the relevant planning authority.

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

- (a) the location and a schedule of plants noting number, species, size and planting density of any proposed planting or seeding;
- (b) cultivation, importing of materials and other operations to ensure plant and seed establishment; and
- (c) details of the five year maintenance regime.

### *Implementation of landscaping and replacement planting*

**11.**—(1) All landscaping and replacement planting works referred to in requirements 9 and 10 must be implemented in the first available planting season after that part of the authorised development to which the landscaping or replacement planting works apply is first brought into operational use and must be carried out in general accordance with specification set out at [ ] and the relevant landscaping scheme for that stage of the authorised development, and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standard or other recognised codes of good practice.

(2) Any tree or shrub planted as part of an approved landscaping or replacement planting scheme that, within a period of five years after planting, is removed, dies or becomes in the

opinion of the relevant planning authority diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

#### *Retention and protection of existing trees and hedgerows*

**12.—**(1) No stage of the authorised development may commence until, for that stage, a Tree and Hedgerow Protection Strategy (THPS) identifying the trees, groups of trees and hedgerows to be retained during that stage has been submitted to and approved by the relevant planning authority.

(2) The THPS referred to in sub-paragraph (1) must include—

- (a) Tree Protection Plans detailing the alignment of temporary physical tree protection measures, in accordance with the details identified in [                    ];
- (b) a schedule of all proposed tree removal and pruning with annotated plans;
- (c) a specification for temporary physical protection for trees and hedgerows; and
- (d) details of an auditable system of compliance with the approved protection measures.

(3) The trees, groups of trees and hedgerows identified in the THPS referred to in sub-paragraph (1) must not be felled or otherwise removed in connection with the construction of the authorised development.

(4) The relevant stage of the authorised development shall not commence until the approved protection measures referred to in sub-paragraph (1) are in place, and they shall thereafter be maintained during the construction of the relevant stage of the authorised development.

#### *Reinstatement schemes*

**13.—**(1) Subject to sub-paragraph (2), any land within the Order limits which is used temporarily for construction is to be reinstated to its former condition, or such condition as the relevant planning authority may approve, within six months of completion of the construction of the stage of authorised development with which it was required, or such further time as may be approved by the relevant planning authority.

(2) Any land within the Order limits required for the installation of the approved underground cables is to be reinstated to its former condition, or such condition as the relevant planning authority may approve, within twelve months of completion of installation of the cables in that land, or such further time as may be approved by the relevant planning authority.

(3) The requirement to reinstate the land to its former condition is subject to the provisions of article 30 (temporary use of land by the undertaker) and article 31 (temporary use of land by UK Power Networks).

#### *Surface water drainage*

**14.—**(1) No stage of the authorised development may commence until for that stage, written details of the surface and foul water drainage system (including means of pollution control) for both permanent and temporary works have, after consultation with the sewerage undertaker, drainage authority and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) Any temporary surface or foul water drainage system must be constructed in accordance with the approved details and remain during the construction of the relevant stage of the authorised development.

(3) Any permanent surface or foul water drainage system must be constructed in accordance with the details approved under sub-paragraph (1).

#### *Contaminated land and groundwater*

**15.—**(1) No stage of the authorised development may commence until a written scheme applicable to that stage to deal with the ground conditions, including contamination of any land or

groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) Remediation measures must be carried out in accordance with the approved scheme.

#### *Inspection of temporary watercourses*

**16.**—(1) No stage of the authorised development may commence until a written scheme for the inspection and clearance of debris from any temporary watercourse required in connection with that stage has, after consultation with the Environment Agency and the relevant drainage authority, been submitted to and approved by the relevant planning authority.

(2) The approved scheme shall be implemented for each temporary watercourse during the construction of that stage of the authorised development until such time as the temporary watercourse has been removed.

#### *Removal of temporary bridges and culverts*

**17.** Any temporary bridge or culvert required in connection with any stage of the authorised development shall be removed within twelve months of completion of the construction of that stage of authorised development for which it was required, or such further time as may be approved by the relevant planning authority, in consultation with the Environment Agency or the relevant drainage authority as appropriate.

#### *Highway works*

**18.**—(1) No work to construct or alter any permanent or temporary means of access to a highway to be used by vehicular traffic shall commence until written details of the design and layout of that means of access has been submitted to and approved by the relevant highway authority.

(2) The highway accesses must be constructed in accordance with the details approved under sub-paragraph (1).

(3) As required and agreed with the relevant highway authority the undertaker will carry out road safety audits of the highway works authorised by this Order in accordance with Standard HD 19/03 of the Department for Transport's Design Manual for Roads and Bridges or in accordance with any standard that supersedes that Standard and must remedy to the reasonable satisfaction of the relevant highway authority any defects identified in any such road safety audits.

## DISCHARGE OF REQUIREMENTS

*Applications made under requirements*

1.—(1) Where an application has been made to a relevant authority for any consent, agreement or approval required by a requirement included in Schedule 3 to this Order, the relevant authority must give notice to the undertaker of its decision on the application within a period of 4 weeks beginning with—

- (a) where no further information is requested under paragraph 1(2), the day immediately following that on which the application is received by the authority;
- (b) where further information is requested under paragraph 1(2), the day immediately following that on which further information has been supplied by the undertaker; or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant authority.

(2) Where an application has been made under paragraph 1(1) the relevant authority may request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(3) If the relevant authority considers further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the relevant authority must, within 7 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(4) If the requirement specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within 1 business day of receipt of the application and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 1 business day of receipt of such a request and in any event within 21 business days of receipt of the application.

(5) If the relevant authority does not give the notification mentioned in sub-paragraph (3) or (4) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

*Fees*

2.—(1) Where an application is made to a relevant planning authority for any consent, agreement or approval required by a requirement included in Schedule 3 to this Order, a fee must be paid to the relevant planning authority as follows—

- (a) a fee of £97; or
- (b) such other fee as may be prescribed (under sections 303 and 333(2A) of the 1990 Act for the discharge of conditions attached to a planning permission).

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within 4 weeks from the date on which it is received,

unless within that period the undertaker agrees in writing that the fee may be retained by the relevant planning authority and credited in respect of a future application.

*Appeals*

3.—(1) The undertaker may appeal if—

- (a) the relevant authority refuses an application for any consent, agreement or approval required by—
    - (i) a requirement set out in Schedule 3, and any document referred to in any requirement set out in Schedule 3; 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 1(1);
  - (c) having received a request for further information under paragraph 1(3) the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
  - (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.
- (2) The procedure for appeals is as follows—
- (a) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant authority and any supporting documents which the undertaker may wish to provide (“the appeal documents”);
  - (b) the undertaker must on the same day provide copies of the appeal documents to the relevant authority and the requirement consultee (if applicable);
  - (c) as soon as is practicable after receiving the appeals documents the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person should be sent;
  - (d) the relevant authority and the requirement consultee (if applicable) may 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 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;
  - (e) the appeal parties may 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 (d) above; and
  - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.
- (3) If the appointed person considers that further information is necessary 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 must be submitted.
- (4) Any further information required pursuant to 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).

*Outcome of appeals*

- 4.—(1) On an appeal under paragraph 3, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

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

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed or set by the appointed person under this paragraph.

(3) The appointed person may proceed to a decision even though no written representations have been made within those 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.

(4) 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 within 6 weeks of the date of the decision.

(5) Any approval given by the appointed person pursuant to this Schedule is deemed to be an approval for the purpose of Schedule 3 to this Order as if it had been given by the relevant planning authority.

(6) 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.

(7) Except where a direction is given pursuant to sub-paragraph 8 requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

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

(9) In considering whether to make any such direction and the terms on which it is made, the appointed person must have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

#### *Interpretation of Schedule 4*

**5.—(1) In this Schedule—**

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

“business day” means Monday to Friday excluding bank holidays;

“relevant authority” means the relevant planning authority, relevant highway authority, relevant street authority, Environment Agency or relevant owner of a watercourse, sewer or drain as may be appropriate to the consent or approval sought; 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 planning authority in discharging that requirement.

SCHEDULE 5

Article 10

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Authority</i>	<i>(2)</i> <i>Street subject to street works</i>
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SCHEDULE 6

Article 12

STREETS SUBJECT TO ALTERATION OF LAYOUT

PART 1

STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

[        ] **Council**

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration of layout</i>

[        ] **Council**

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration of layout</i>

PART 2

STREETS SUBJECT TO TEMPORARY ALTERATION OF LAYOUT

[        ] **Council**

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration of layout</i>

SCHEDULE 7

Article 13

STREETS OR PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

PART 1

STREETS OR PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP FOR WHICH A DIVERSION IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street or public right of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>	<i>(4)</i> <i>Temporary diversion</i>

PART 2

STREETS OR PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP FOR WHICH NO DIVERSION IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street or public right of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>

## SCHEDULE 8

Article 25

### EXTINGUISHMENT OF PRIVATE RIGHTS AND RESTRICTIVE COVENANTS RELATING TO APPARATUS REMOVED FROM LAND SUBJECT TO TEMPORARY POSSESSION

#### PART 1

##### NATIONAL GRID

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot</i>

#### PART 2

##### UK POWER NETWORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot</i>

SCHEDULE 9

Article 36

DEEMED MARINE LICENCE

## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

### *Compensation enactments*

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

**2.—(1)** Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

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

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there is substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

### *Application of the 1965 Act*

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

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

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

**4.** For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

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(a) 1973 c. 26.

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

5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the tribunal; and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
  - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the National Grid (Richborough Connection Project) Development Consent Order 201[ ](a) (“the Order”) ceases, in relation to that person, to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section must be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

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

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

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(a) S.I. 201[ ]/[ ]

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

**7.** Section 11 of the 1965 Act (powers of entry) is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

**9.** Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 11

Article 19

LAND WHICH MAY BE COMPULSORILY ACQUIRED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot number of land shown on land plans</i>

SCHEDULE 12

Articles 30 and 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

PART 1

NATIONAL GRID

[            ] **Council**

<i>(1)</i> <i>Plot number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>	<i>(4)</i> <i>Element of Work in respect of which land is not required to be re-instated</i>

[            ] **Council**

<i>(1)</i> <i>Plot number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>	<i>(4)</i> <i>Element of Work in respect of which land is not required to be re-instated</i>

**PART 2**  
**UK POWER NETWORKS**

[     ] **Council**

<i>(1)</i> <i>Plot number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>	<i>(4)</i> <i>Element of Work in respect of which land is not required to be re-instated</i>

[     ] **Council**

<i>(1)</i> <i>Plot number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>	<i>(4)</i> <i>Element of Work in respect of which land is not required to be re-instated</i>

SCHEDULE 13

Article 41

TRAFFIC REGULATION

PART 1

TEMPORARY PROHIBITION OF VEHICULAR ACCESS AND NO WAITING AND SPEED RESTRICTION

[        ] Council

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Note</i>

[        ] Council

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Note</i>

PART 2

TEMPORARY PROHIBITION OF VEHICULAR ACCESS AND NO WAITING RESTRICTION

[        ] Council

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Note</i>

[        ] Council

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Note</i>

PART 3

NO WAITING RESTRICTION

[        ] Council

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Note</i>

SCHEDULE 14

Article 42

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Number reference shown on Trees and Hedges to be removed or affected Plans</i>	<i>(3)</i> <i>Work to be carried out</i>	<i>(4)</i> <i>TPO reference</i>

## PROTECTIVE PROVISIONS

## PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE  
UNDERTAKERS

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

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that electricity undertaker for the purposes of electricity supply;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas undertaker for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other water apparatus belonging to or maintained by that water 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(b); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“statutory 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);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and

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(a) 1989 c.29.

(b) 1991 c.56.

(c) 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).

(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 statutory undertaker to whom it belongs or by whom it is maintained.

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

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

**5.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a statutory 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 statutory undertaker in question.

(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, it must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the statutory undertaker in question, must on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 52, and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**6.—(1)** Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a statutory 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 4 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker in question the proper and reasonable expenses reasonably incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

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

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

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

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 51 (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 statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

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

## PART 2

### PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

(2) In this Part of this Schedule—

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

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act<sup>(a)</sup>;

“electronic communications code network” means—

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

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

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

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

**2.** The exercise of the powers of article 35 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984<sup>(b)</sup>.

**3.**—(1) Subject to sub-paragraphs (2) to (3), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works 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) the undertaker must bear and pay the cost reasonably and properly incurred by the operator in making good such damage.

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

(3) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 51 (arbitration).

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

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

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

**5.** 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.

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(a) See section 106.

(b) 1984 c.12.

## PART 3

### PROTECTION FOR HIGHWAYS AND TRAFFIC

1.—(1) The provisions of this Part of this Schedule shall 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 shall 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 shall have regard to the potential disruption of traffic which may be caused and shall seek to minimise such disruption so far as is reasonably practicable.

(5) The undertaker shall 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 shall be 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 shall 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.

2.—(1) Before commencing the construction of, or the carrying out of any work which involves interference with a highway, the undertaker shall 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 shall 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 shall be 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 shall give to such officer all reasonable facilities for such inspection and, if he shall be 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 under any highway, the undertaker shall adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.

**4.—**(1) The undertaker shall 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 shall 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 shall 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 shall be deemed to have consented to the request as submitted.

**5.** The undertaker shall 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.

**6.—**(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 shall 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 shall, 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.

**7.—**(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 shall be 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 shall be repaid to the relevant highway authority by the undertaker.

**8.** The undertaker shall 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.

**9.** The undertaker shall, 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.

**10.—**(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 shall make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of the relevant highway

authority, and shall 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 shall 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(a).

**11.** 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 shall make compensation to the relevant highway authority.

**12.** The fact that any act or thing may have been done in accordance with plans approved by the relevant highway authority shall 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.

**13.** 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 51.

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(a) 1991 c. 22.

SCHEDULE 16

Article 48

AMENDMENT OF LOCAL LEGISLATION

PART 1

LOCAL ENACTMENTS

<i>Year</i>	<i>Chapter</i>	<i>Title</i>	<i>Section</i>

PART 2

BYELAWS

<i>(1)</i> <i>Title</i>	<i>(2)</i> <i>Byelaw to be disapplied</i>

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises National Grid (referred to in this Order as “the undertaker”) to authorise works to the national electricity transmission system between Richborough and Canterbury. The connection of a 400,000 volt overhead line is required to provide sufficient transmission capacity to enable the connection of new electricity generation projects in the region including Nemo Link, and to carry out all associated works.

In order to accommodate these works, the Order also authorises United Kingdom Power Networks plc (referred to in this order as UK Power Networks), in addition to the undertaker, to reconfigure the local electricity network (including the removal of the existing 132,000 volt overhead line between Richborough and Canterbury South substations).

The Order also makes provision in connection with the maintenance of the authorised development

The Order permits the undertaker to acquire compulsorily or by agreement, land and rights in land and to use land for this purpose and UK Power Networks to acquire compulsorily rights in land and to use the land in connection with the reconfiguration of the local electricity network.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 45 of this Order may be inspected free of charge during working hours at the offices of National Grid Electricity Transmission plc, 1-3 Strand, London WC2N 5EH.



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STATUTORY INSTRUMENTS

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201[ ] No. [ ]

**INFRASTRUCTURE PLANNING**

The National Grid (Richborough Connection Project)  
Development Consent Order 201[ ]

**BIRCHAM DYSON BELL LLP**  
50 Broadway, London SW1H 0BL  
Solicitors and Parliamentary Agents  
[12664606.01 — 13.01.15]





## Contact us

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Visit our project website:

[www.richboroughconnection.co.uk](http://www.richboroughconnection.co.uk)



Send an email to:

[richboroughconnection@communitycomms.co.uk](mailto:richboroughconnection@communitycomms.co.uk)



Write to our freepost address at:

**FREEPOST RICHBCONNECTION**



Call our freephone number:

**0800 157 7878**



Follow us on Twitter:

**@NGRichborough**

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