



Morven Hawthorn Pit Grid Connection Project

Preliminary Environmental Information Report

Draft Development Consent Order

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202[•] No. 0000

INFRASTRUCTURE PLANNING

The Morven Hawthorn Pit Grid Connection Project Order 202[•]

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

The application was examined by the Panel appointed by the Secretary of State pursuant to section 61(c) and section 65(d) of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of the 2008 Act and with the Infrastructure Planning (Examination Procedure) Rules 2010(e). The Panel has submitted a report to the Secretary of State under section 74(2)(f) of the 2008 Act.

(a) 2008 c. 29. Section 37 was amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264.

(c) Section 61 was amended by section 128(2) and Schedule 13, paragraph 18 to the Localism Act 2011 (c. 20) and by section 26 of the Infrastructure Act 2015 (c. 7).

(d) Section 65 was amended by Schedule 13 paragraph 22(2) and Schedule 25, paragraph 1 to the Localism Act 2011 (c. 20) and by section 27(1) of the Infrastructure Act 2015 (c. 7).

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

(f) Section 74 was amended by sections 128(2) and 237 and by Schedule 13, paragraph 29 and Schedule 25, paragraph 1, to the Localism Act 2011 (c. 20).

The Secretary of State has considered the representations made and not withdrawn, and the report and recommendation of the Panel, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017^(a) and, as a national policy statement has effect in relation to the proposed development, has had regard to the documents and matters referred to in section 104(2)^(b) of the 2008 Act.

[The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application on terms that, in the opinion of the Secretary of State, are not materially different from those proposed in the application.] / [The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application with modifications which, in the opinion of the Secretary of State, do not make any substantial changes to the proposals comprised in the application.]

[The Secretary of State is satisfied that the open space forming special category land specified in the land plan and special category land plan (as defined in article 2 of this Order), when burdened with any new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(2)^(c) of the 2008 Act applies.]

The Secretary of State, in exercise of the powers conferred by sections [114, 115, 120, 122, 123, 132, 149A and schedule 5] of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Morven Hawthorn Pit Grid Connection Project Order 202^[•] and comes into force on ^[•] 202^[•].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961^(d);

“the 1965 Act” means the Compulsory Purchase Act 1965^(e);

“the 1980 Act” means the Highways Act 1980^(f);

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

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

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

^(a) S.I. 2017/572.

^(b) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c. 23) and by section 128(2) of the and Schedule 13, paragraphs 1 and 49(1) to (6) of the Localism Act 2011 (c. 20).

^(c) Section 132 was amended by section 24(3) of the Growth and Infrastructure Act 2013 (c. 27).

^(d) 1961 c. 33.

^(e) 1965 c. 56.

^(f) 1980 c. 66.

^(g) 1981 c. 66.

^(h) 1987 c. 27.

⁽ⁱ⁾ 1989 c. 29.

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

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

“the 2000 Act” means the Countryside and Rights of Way Act 2000(c);

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

“the 2004 Act” means the Energy Act 2004(e);

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

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

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(h);

“access to works plan” means the plan or plans certified as the access to works plan or plans by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

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

“ancillary works” means the ancillary works described in Part 3 of Schedule 1 (ancillary works) and any other works authorised by this Order, and which are not development within the meaning of section 32 of the 2008 Act;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“authorised development” means the development and associated development described in Part 1 and Part 2 of Schedule 1 (authorised development) and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

“bank holiday” means a day that is a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(i);

“book of reference” means the document certified by the Secretary of State as the book of reference for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“buoy” means any floating device used for navigational purposes or measurement purposes, including LIDAR, wave buoys and guard buoys;

“cable circuit” means a number of electrical conductors necessary to transmit electricity between two points, comprising one or more conductors which may be bundled as one cable or take the form of separate cables, and in either case the circuit may include one or more auxiliary cables for the purpose of control, monitoring, protection or general communications;

“cable crossings” means the crossing of existing cables, pipelines or other existing infrastructure by the cables authorised by this Order together with cable protection;

“cable ducts” means conduits for the installation of cables;

“cable protection” means physical measures for the protection of cables including concrete mattresses, split pipe system, and rock placement (including material used for cable crossings);

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

“commence” means—

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- (a) 1990 c. 8.
 - (b) 1991 c. 22.
 - (c) 2000 c. 37.
 - (d) 2003 c. 21.
 - (e) 2004 c. 20.
 - (f) 2008 c. 29.
 - (g) 2009 c. 23.
 - (h) S.I. 2016/1154.
 - (i) 1971 c. 80.

- (a) in relation to works seaward of MHWS, the first carrying out of any licenced marine activities authorised by the deemed marine licence, save for operations consisting of preconstruction surveys, monitoring, unexploded ordnance surveys and clearance of low order unexploded ordnance approved under the deemed marine licence; or
- (b) in respect of any other works comprised in the authorised development, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than onshore site preparation works,

and the words “commencement” and “commenced” must be construed accordingly;

“commissioning” means the process of assuring that all systems and components of the authorised development are tested to verify that they function and are operable in accordance with the specifications and operational requirements of the undertaker;

“Crown land plan” means the plan or plans certified as the crown land plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“deemed marine licence” means the marine licence set out in Schedule 10 (deemed marine licence under the 2009 Act);

“direct pipe” refers to a cable installation technique which involves the use of a mini-or-micro-tunnel boring machine and a hydraulic (or other) thruster rig to directly install a steel pipe between two points;

“discharging authority” for the purposes of Schedule 2 (requirements) and Schedule 3 (procedure for discharge of requirements) means Durham County Council;

“environmental statement” means the documents listed in Part 1 and Part 2 of Schedule 12 (documents to be certified) and certified as the environmental statement by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“HDD” or “horizontal directional drilling” refers to a trenchless technique for installing cables and cable ducts involving drilling in an arc between two points;

“highway” and “highway authority” each have the same meaning as in the 1980 Act(a);

“Historic England” means the Historic Buildings and Monuments Commission for England;

“HVAC” means high voltage alternating current;

“HVDC” means high voltage direct current;

“indicative extent of marine licence and grid coordinates plan” means the plan certified by the Secretary of State as the indicative extent of marine licence and grid coordinates plan for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“intertidal works” means Work No. 2B and any related further associated development in connection with those works;

“joint bay” means an excavation formed along the cable route to facilitate the jointing together of the cables;

“land plans” means the plan or plans certified as the land plan or land plans by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“landfall construction method statement” means the document certified as the landfall construction method statement by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“lead local flood authority” has the same meaning as in section 6(7) (other definitions) of the Flood and Water Management Act 2010;

(a) “highway” is defined in section 328(1) and “highway authority” is described in section 1. Section 1 was amended by sections 8 and 102 and Schedules 4, paragraph 1 and Schedule 17 to the Local Government Act 1985 (c. 51), by section 21 of the 1991 Act and by section 1(6) and Schedule 1, paragraphs 1 to 4 of the Infrastructure Act 2015 (c. 7). There are other amendments which are not relevant to this Order.

“link box” means the underground metal box placed within a pit where the metal sheaths between adjacent export cable sections are connected and earthed and installed within a ground level manhole or inspection chamber to allow access to the link box for regular maintenance or fault-finding purposes;

“low order unexploded ordnance clearance” means an unexploded ordnance clearance which does not seek to detonate the unexploded ordnance;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace any part of the authorised development (excluding removal, reconstruction or replacement of whole buildings associated with the onshore substation), to the extent assessed in the environmental statement and any derivative of maintain must be construed accordingly;

“Marine Management Organisation” or “MMO” means the Marine Management Organisation, which is the body created under the 2009 Act, and which is responsible for the monitoring and enforcement of the deemed marine licence;

“mean high water springs” or “MHWS” means the average throughout the year, of two successive high waters, during a 24-hour period in each month when the range of the tide is at its greatest (Spring tides);

“mean low water springs” or “MLWS” means the lowest level which spring tides reach on average over a period of time;

“micro-tunnel” refers to a tunnelling technique involving the use of a hydraulic (or other) jacking rig and a mini-or-micro boring machine to install a concrete tunnel or pipe sleeve between two points;

“offshore in-principle monitoring plan” means the plan or plans certified by the Secretary of State as the offshore in-principle monitoring plan for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“the offshore Order limits plan” means the plan or plans certified by the Secretary of State as the offshore Order limits plan for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“offshore works” means Work No. 1 and Work No. 2A and any related further associated development in connection with those works;

“onshore and intertidal order limits plan” means the plan or plans certified by the Secretary of State as the onshore and intertidal order limits plan for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“onshore crossing schedule” means the document certified by the Secretary of State as the onshore crossing schedule for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“onshore site preparation works” means operations consisting of site clearance including vegetation clearance (including the removal of trees and hedgerows) and demolition, early planting of landscaping works, environmental mitigation or enhancement works, biodiversity net gain works, archaeological investigations, intrusive and other environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, preparatory works to existing infrastructure and diversion and laying of utilities and services, erection of any temporary means of enclosure, site security works, the erection of welfare facilities and compounds for welfare facilities, creation of temporary hardstanding, creation of means of access and the temporary display of site notices or advertisements;

“onshore works” means Work Nos. 2C to 12 and any related further associated development in connection with those works;

“operational noise management plan” means the document certified as the operational noise management plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

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

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

“outline biodiversity net gain plan” means the document certified as the outline biodiversity net gain plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline design principles” means the document certified as the outline design principles by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline fisheries liaison and co-existence plan” means the document certified as the outline fisheries liaison and co-existence plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline highways access management plan” means the document certified as the outline highways access management plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline landscape and ecological management plan” means the document certified as the outline landscape and ecological management plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline offshore cable specification and installation plan” means the document certified as the outline offshore cable specification and installation plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline offshore environmental management plan” means the document certified as the outline offshore environmental management plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline offshore written scheme of investigation and protocol for archaeological discoveries” means the document certified as the outline offshore written scheme of investigation and protocol for archaeological discoveries by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline onshore construction method statement” means the document certified as the outline onshore construction method statement by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline onshore written scheme of investigation” means the document certified as the outline onshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“outline operational drainage management plan” means the document certified as the outline operational drainage management plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“public holiday” means Christmas Day, Good Friday or a day which is a bank holiday in England;

“public rights of way management plan” means the plan or plans certified as the public rights of way management plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“relevant planning authority” means Durham County Council, or any successor to it as the planning authority for the land in question;

“requirements” means, or a reference to a numbered requirement is a reference to, those matters set out in Schedule 2 (requirements) to this Order;

“SNCB” means statutory nature conservation body, being the appropriate nature conservation body as defined in Regulation 5 of the Conservation of Habitats and Species Regulations 2017^(a) or its equivalent in the Conservation of Offshore Marine Habitats and Species Regulations 2017^(b);

“special category land” means the land shown on the special category land plan and described in the book of reference;

“special category land plan” means the plan certified as the special category land plan by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act;

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

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

“street works plan” means the plan or plans certified as the street works plan or plans by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“temporary traffic regulation order plan” means the plan or plans certified as the temporary traffic regulation order plan or plans by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“transition joint bay” means the underground concrete bays in Work No. 3 where the offshore export cable circuits are jointed to the onshore export cable circuits;

“tree preservation order and hedgerow plan” means the plan or plans certified as the tree preservation order and hedgerow plan or plans by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.);

“trenchless installation techniques” means the installation of electrical cable circuits and/or cables in cable ducts by means of boring techniques including horizontal directional drilling, pipe jacking/horizontal auger boring, direct pipe and micro-tunnel;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means, subject to article 6 (benefit of the Order), Morven Offshore Wind Limited (company number 13792251);

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

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

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

(a) S.I. 2017/1012.

(b) S.I. 2017/1013.

(c) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c. 26).

(d) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c. 7).

“working day” means a day which is not a weekend, bank holiday or other public holiday in England or Wales;

“works plans” means the works plans (offshore) and the works plans (onshore and intertidal);

“works plans (offshore)” means the plan or plans certified as the works plan or plans (offshore) by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.); and

“works plans (onshore and intertidal)” means the plan or plans certified as the works plan or plans (onshore and intertidal) by the Secretary of State for the purposes of this Order under article 40 (certification of plans and documents, etc.).

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

(3) All distances, directions, capacities, volumes and lengths referred to in this Order are approximate.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) The expression “includes” is to be construed without limitation unless the contrary intention appears.

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

(7) [References in this Order to materially new or materially different environmental effects in comparison with those reported in the environmental statement shall not be construed so as to include the avoidance, removal or reduction in magnitude of an adverse environmental effect that was reported in the environmental statement as a result of the authorised development.]

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Work Nos. 1, 2A and 2B must be constructed within the Order limits seaward of MHWS and Work Nos. 2C and 3 to 12 must be constructed within the Order limits landward of MHWS.

Deemed marine licence under the 2009 Act

4. The marine licence set out in Schedule 10 is deemed to have been granted to the undertaker under Part 4 of the 2009 Act (marine licensing) for the licensed activities specified in Part 1 of the licence and subject to the conditions specified in Part 2 of the licence.

Power to maintain the authorised development

5.—(1) Subject to paragraph (2), the undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licence.

Benefit of the Order

6.—(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) The undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licence) and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (excluding the deemed marine licence) and such related statutory rights as may be so agreed,

except where paragraph (7) applies, in which case the consent of the Secretary of State is not required.

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

- (a) transfer to the transferee the whole of the deemed marine licence and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to the lessee for the duration of the period mentioned in paragraph (2)(b) the whole of the deemed marine licence and such related statutory rights as may be so agreed,

except where paragraph (7) applies, in which case the consent of the Secretary of State is not required.

(4) Where an agreement has been made in accordance with paragraph (2) or (3), references in this Order to the undertaker, except in paragraphs (6) and (8), include references to the transferee or the lessee (as applicable).

(5) The Secretary of State must consult the MMO before giving consent to the transfer to another person of the benefit of the provisions of the deemed marine licence.

(6) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (2) or (3)—

- (a) the benefit transferred or granted (“the transferred benefit”) includes any rights that are conferred, or any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to the transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraphs (2) or (3) 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.

(7) The consent of the Secretary of State is not required for the exercise of powers under paragraphs (2) or (3) where—

- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply, etc.) of the 1989 Act;
- (b) in relation to any other works within a highway, the transferee or lessee is a highway authority responsible for the relevant highway; or
- (c) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have lapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in full and final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(8) Prior to any transfer or grant under this article taking effect, the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.

(9) A notice required under paragraph (8) must—

- (a) state—
 - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
 - (ii) subject to paragraph (10), the date on which the transfer will take effect;
 - (iii) the provisions to be transferred or granted;
 - (iv) the restrictions, liabilities, and obligations that, in accordance with sub-paragraph (7)(c), will apply to the person exercising the powers transferred or granted; and
 - (v) where paragraph (8) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land;
- (b) be accompanied by—
 - (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
 - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(10) The notice specified under paragraph (9) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(11) Section 72(7) and (8) of the 2009 Act (variation, suspension, revocation and transfer) do not apply to a transfer or grant of the whole of the benefit of the provisions of the deemed marine licence to another person by the undertaker pursuant to an agreement under paragraph (3) save that the MMO may amend any deemed marine licence granted under Schedule 10 of the Order to correct the name of the undertaker to the name of the transferee or lessee under this article 6 (benefit of the Order).

Application and modification of legislative provisions

7. The following provisions are modified to the extent specified, or do not apply, in relation to the construction or works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development—

- (a) regulation 6 of the Hedgerows Regulations 1997 is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“or

- (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”;
- (b) the provisions of the Neighbourhood Planning Act 2017 insofar as they relate to the temporary possession of land under article 31 (temporary use of land for carrying out the authorised development) and article 32 (temporary use of land for maintaining the authorised development) of this Order;
- (c) regulation 12 (requirement for an environmental permit) of the 2016 Regulations in respect of a flood risk activity only;
- (d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 of the Water Resources Act 1991 that require consent or approval for carrying out the works;
- (e) section 23 (prohibition of obstructions etc. in watercourses) and 30 (authorisation of drainage works in connection with a ditch) of the Land Drainage Act 1991;
- (f) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (power to make byelaws) that require consent or approval for the carrying out of works; and
- (g) [applicable local legislation to be inserted].

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraphs (d), (fb), (g) and (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act, no order is to be made, and no fine is to 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, maintenance or decommissioning of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974; or
 - (ii) is a consequence of the construction, maintenance or decommissioning 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 compliance with requirement 16 (control of noise during operational stage); or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised development.

PART 3

STREETS

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets and public rights of way 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, on or under the street;
- (d) place and keep apparatus in or under the street;
- (e) maintain apparatus in or under the street or change its position; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e) (inclusive).

(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.

Application of the 1991 Act

10.—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under the 1991 Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under article 9 (street works); and
- (b) the temporary closure, temporary alteration or temporary diversion of a street by the undertaker under article 12 (temporary closure of public rights of way) and article 13 (temporary restriction of use of streets),

whether or not the carrying out of the works or the closure, alteration or diversion constitutes street works within the meaning of the 1991 Act.

(2) The provisions of the 1991 Act^(a) are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to a street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulations);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of the 1991 Act that apply for the purposes of the provisions referred to in sub-paragraphs (a) to (g) (inclusive).

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a closure, alteration or diversion (as the case may be) required in a case of emergency.

(4) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56^(b) (power to give directions as to timing of street works);

^(a) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c. 18).

- (b) section 56A(a) (power to give directions as to placing of apparatus);
- (c) section 58(b) (restriction on works following substantial road works);
- (d) section 58A(c) (restriction on works following substantial street works);
- (e) section 61 (protected streets); and
- (f) schedule 3A(d) (restriction on works following substantial street works).

Construction and maintenance of new or altered highway

11.—(1) Any highway to be constructed under this Order must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed in writing with the highway authority, the highway including any culverts or other structures laid under it must be maintained by and at the expense of the relevant highway authority from its completion.

(2) Where a highway is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed in writing with the relevant highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the relevant highway authority from its completion.

(3) In this article “relevant highway authority” means the highway authority in which the highway that is constructed, altered or diverted is situated.

Temporary closure, alteration or diversion of public rights of way

12.—(1) The undertaker may, in connection with the carrying out of the authorised development, temporarily close, alter or divert each of the public rights of way specified in column (1) of Part 2 (public rights of way to be temporarily closed, altered or diverted) of Schedule 5 (traffic regulation) to the extent specified in column (2), by reference to the letters shown on the temporary closure of public rights of way plan.

(2) The public rights of way specified in Part 2 (public rights of way to be temporarily closed, altered or diverted) of Schedule 5 may not be temporarily closed, altered or diverted under this article unless a diversion for the closed section of that public right of way, is first provided by the undertaker to the standard defined in the public rights of way management plan forming part of the code of construction practice to be approved in accordance with the requirements, to the reasonable satisfaction of the highway authority.

(3) The relevant diversion route provided under paragraph (2) will be subsequently maintained by the undertaker until the re-opening of the relevant right of way specified in paragraph (1).

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

Temporary restriction of use of streets

13.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily close, restrict, alter or divert any street and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street;
- (b) authorise the use of motor vehicles on classes of highway where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and

(b) Section 56 was amended by sections 40 and 43 of, and paragraph 1 of Schedule 1 to, the Traffic Management Act 2004.

(a) Section 56A was inserted by Section 44 of the Traffic Management Act 2004.

(b) Section 58 was amended by sections 40 and 51 of, and paragraph 1 of Schedule 1 to, the Traffic Management Act 2004.

(c) Section 58A was inserted by section 51(1) of, and Schedule 4 to, the Traffic Management Act 2004.

(d) Schedule 3A was inserted by section 52(2) of, and paragraph 1 of Schedule 4 to, the Traffic Management Act 2004.

(c) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limiting paragraph (1), the undertaker may use any street temporarily closed under the powers conferred by this article within the Order limits as a temporary working site.

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

(4) Without limiting paragraph (1), the undertaker may temporarily close, restrict, alter or divert the streets specified in Part 1 (streets to be temporarily closed or restricted) of Schedule 5 to the extent specified in column (2), by reference to the numbers shown on the street works and access to works plan.

(5) The undertaker must not temporarily close, restrict, alter, divert or use as a temporary working site—

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

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

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (6), that street authority is deemed to have granted consent.

Access to works

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

- (a) form, lay out and maintain a means of access, or improve or maintain an existing means of access, in the locations specified in columns (1) and (2) of Schedule 6 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority in accordance with requirement 10 (highway accesses), 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 the relevant planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that relevant planning authority is deemed to have been granted.

Traffic regulation

15.—(1) Subject to the provisions of this article, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with, or in consequence of, the construction of the authorised development, temporarily—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (b) make provision as to the direction or priority of vehicular traffic on any road;
- (c) permit, prohibit or restrict the use of any road;
- (d) permit, prohibit or restrict vehicular access to any road;
- (e) place traffic signs and signals in the extents of the road specified in column (2) of Part 1 (streets to be temporarily closed or restricted), column (2) of Part 2 (public rights of way to be temporarily closed, altered or diverted) and column (3) of Part 3 (speed limits) of Schedule 5 (traffic regulation);

- (f) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(a).

(2) The undertaker must notify the chief officer of police and the traffic authority in whose area the road is situated of the intended date of commencement of development under this Order and the intended date of commencement of any maintenance works where the exception set out in paragraph (1) will apply not less than 14 days before such work are commenced.

(3) On and after the date notified by the undertaker in accordance with paragraph (4) no person is to drive any motor vehicle at a speed exceeding the limit specified in column (3) of Part 3 (speed limits) of Schedule 5 (traffic regulation) along the lengths of road identified in the corresponding row of column (2) of that Part. No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(b) when in accordance with regulation 3(5) of those regulations.

(4) The undertaker must notify the chief officer of police and the traffic authority in whose area the road is situated of the date upon which paragraph (3) takes effect not less than 14 days before that date.

(5) Before exercising the power conferred by paragraph (1) the undertaker must—

- (a) consult with the chief officer of police in whose area the road is situated;
- (b) obtain the written consent of the traffic authority in whose area the road concerned is situated; and
- (c) consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(6) Without limitation on the scope of paragraph (1), and subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development revoke, amend or suspend in whole or in part any order not listed in Schedule 6 (access to works) made, or having effect as if made, under the 1984 Act, either at all times or at times, on days or during such periods as may be specified by the undertaker.

(7) The power conferred by paragraph (6) may be exercised at any time prior to the expiry of 12 months from the commencement of operation of the authorised development but subject to paragraph (9) any prohibition, restriction or other provision made under this article may have effect both before and after the expiry of that period.

(8) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (9) below.

(9) Unless otherwise stated, the undertaker must not exercise the powers conferred by this article unless it has—

- (a) given to the chief officer of police and to the traffic authority in whose area the road is situated not less than—
 - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(10) Any prohibition, restriction or other provision made by the undertaker under this article—

(a) S.I. 2016/362.

(b) S.I. 2011/935.

- (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 (power of local authorities to provide parking places) of the 1984 Act, and the instrument by which it is effected may specify specific savings and exemptions 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 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).

(11) 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 this article within a period of 24 months from the commencement of operation of the authorised development.

(12) In this article, expressions used in this article and in the 1984 Act have the same meaning.

(13) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(14) Save for any application made to National Highways, if the traffic authority fails to notify the undertaker of its decision within 56 days of receiving an application for consent under this article, the traffic authority is deemed to have granted consent.

Power to alter layout etc. of streets

16.—(1) Subject to paragraphs (2) and (3), the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with constructing, operating or maintaining the authorised development alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

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

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

(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.

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

Agreements with street authorities

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

- (a) any temporary closure, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any works referred to in article 9 (street works) or article 16 (power to alter layout etc. of streets).

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and

(a) 2004 c. 18. There are amendments to this Act not relevant to this Order.

- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

18.—(1) Subject to paragraphs (3) and (4) below, 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 inspect, lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is 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 or any public sewer or drain, except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to paragraph (1) except—

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

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article damage or interfere with the beds or banks of any watercourse forming part of a main river as defined under section 113(1) of the Water Resources Act 1991, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency.

(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 pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise any water discharge or groundwater activity for which an environmental permit is required by regulation 12 (requirement for an environmental permit) of the 2016 Regulations.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which either belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the 2016 Regulations have the same meaning as in those Regulations.

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

(a) 1991 c. 56. Section 106 was amended by sections 35(8)(a) and 43(2) of and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99(2), (4), (5)(a), (5)(b), (5)(c) of the Water Act 2003 (c. 37) and section 32, and paragraph 16(1) of and Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

Protective works to buildings

19.—(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 which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

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

(3) For the purposes of determining how the powers 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 purposes 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 that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power 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 the power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(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 of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 41 (arbitration).

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

(8) Where—

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

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

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

(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) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent that it applies to the

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

(12) 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 that 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 that has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land onshore

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

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes, boreholes, excavations or take horizontal cores in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and groundwater samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including the digging of trenches; 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, boreholes, excavations, horizontal cores or trenches.

(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 on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes, boreholes excavations, horizontal cores or trenches.

(4) No trial holes, boreholes excavations, horizontal cores or trenches may be made under this article—

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

but such consent must not be unreasonably withheld or delayed.

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

(6) If either a highway authority or a 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.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to article 23 (time limit for exercise of authority to acquire land compulsorily), article 24(2) (compulsory acquisition of rights etc.), article 28 (acquisition of subsoil only), article 30 (rights under or over streets), article 31 (temporary use of land for carrying out the authorised development), article 46 (Crown rights) and Schedule 14 (protective provisions).

Compulsory acquisition of land: minerals

22. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated in this Order, subject to the following modifications—

- (a) for “acquiring authority” substitute “undertaker”; and
- (b) for “undertaking” substitute “authorised development”.

Time limit for exercise of authority to acquire land compulsorily

23.—(1) The applicable period for the purposes of section 4 of the 1965 Act (time limit for giving notice to treat) and section 5A of the 1981 Act (time limit for general vesting declaration) is seven years beginning on the day on which this Order is made.

(2) No notice to treat is to be served under Part 1 (compulsory purchase under the Acquisition of Land Act of 1946) of the 1965 Act and no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act) after the end of the applicable period, including any extension to the applicable period pursuant to those Acts.

(3) The authority conferred by article 31 (temporary use of land for carrying out the authorised development) must not be used after the end of the applicable period referred to in paragraph (1), save that if an application is made under section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent) the applicable period is to be extended by—

- (a) a period equivalent to the period beginning on the day the application is made and ending on the day it is withdrawn or finally determined; or
- (b) if shorter, one year.

(4) An application is not finally determined for the purposes of paragraph (3)(a) if an appeal in respect of the application—

- (a) could be brought (ignoring any possibility of an appeal out of time with permission); or
- (b) has been made and not withdrawn or finally determined.

(5) Nothing in paragraph (3) 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 etc.

24.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 25 (private rights) and article 33 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 7 (land in which only new rights etc., may be acquired), the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights over land and the creation and acquisition of the new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

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

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

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) 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 and 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) Subject to the modifications set out in Schedule 8 (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 are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

(8) Subject to article 46 (Crown rights), so much of the special category land as is required for the purposes of exercising the powers acquired by the undertaker pursuant to this article is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those rights.

Private rights

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

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily, by agreement or through the grant of a lease of the land 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 earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition of rights or the imposition of restrictions under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restriction—

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

whichever is the earliest.

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

(4) Subject to the provisions of this article, all private rights over any part of the Order land that is owned by, vested in or acquired by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act, to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of right, and removal of apparatus, of statutory undertakers etc.) or article 33 (statutory undertakers) applies.

(7) Paragraphs (1), (2) and (3) do not apply in relation to any private right or restrictions over land which are vested in or belong to the undertaker.

(8) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictions over or affecting the land;

(ii) the undertaker's appropriation of the land;

(iii) the undertaker's entry onto the land; or

(iv) the undertaker's taking temporary possession of the land,

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

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

(9) If an agreement referred to in paragraph (8)(b)—

(a) is made with a person in or to whom the right or restriction is vested, belongs or benefits; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(10) Reference in this article to private rights over land includes reference to any rights of way, trusts, incidents, easements, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

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

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

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

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

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

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

- (6) In section 5B(1) (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 5A” substitute “the seven year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the Morven Hawthorn Pit Grid Connection Project Order 202[]”.
- (7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 28(1) (acquisition of subsoil only) of the Morven Hawthorn Pit Grid Connection Project Order 202[], which excludes the acquisition of subsoil only from this Schedule.”.
- (10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 29 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

Statutory authority to override easements and other rights

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

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

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

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

authorised by virtue of this Order and the operation of section 158 (nuisance: statutory authority) of the 2008 Act.

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

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

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

Acquisition of subsoil only

28.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 21 (compulsory acquisition of land) or article 24 (compulsory acquisition of rights etc.) 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 land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act as modified by Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

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

Modification of Part 1 of the 1965 Act

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

(2) In Section 4A(1) (extension of time limit during challenge), for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute, “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the seven year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the Morven Hawthorn Pit Grid Connection Project Order 202[].”

(3) In Section 11A (powers of entry: further notices of entry)—

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

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 23 (time limit for exercise of authority to acquire land compulsorily) of the Morven Hawthorn Pit Grid Connection Project Order 202[].”

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

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

“(2) But see article 28(3) (acquisition of subsoil only) of the Morven Hawthorn Pit Grid Connection Project Order 202[], which excludes the acquisition of subsoil only from this Schedule.”; and
- (b) at the end insert—

“PART 4

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 19 (protective works to buildings), article 20 (authority to survey and investigate the land onshore), article 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the Morven Hawthorn Pit Grid Connection Project Order 202[].”.

Rights under or over streets

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land 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 (determination of questions of disputed compensation) of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

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

- (a) enter on or take temporary possession of—
 - (i) the land specified in columns (1) of Schedule 9 (land of which temporary possession may be taken) (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from the land;
- (c) construct temporary works (including the provision of means of access and footpaths), haul roads, security fencing, bridges, services, signage, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised development;
- (e) construct any works, or use the land, as specified in relation to that land in column (3) of Schedule 9 (land of which temporary possession may be taken), or any mitigation works in connection with the authorised development;
- (f) construct such works on that land as are mentioned in Part 1 of Schedule 1 (authorised development); and
- (g) carry out mitigation works required pursuant to the requirements in Schedule 2 (requirements).

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7 (land in which only new rights etc., may be acquired); or

- (b) in the case of land specified in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before 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) Unless the undertaker has served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession or otherwise agreed with the owners of the land, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets and public rights of way subject to street works) or any new footpath surface or other enhancements carried out under this article to any footpath or any improvements carried out under this article to any bridge;
- (d) remove any fencing or boundary treatments installed by the undertaker under this article to replace or enhance existing fencing or boundary treatments; or
- (e) restore the land on which any works have been carried out under paragraph (1)(g) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements of Schedule 2.

(5) The undertaker must pay compensation to the owners and occupiers of land 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 any power conferred by this article.

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

(7) Nothing in this article affects any liability to pay compensation under section 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).

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

- (a) acquiring new rights or imposing restrictive covenants over any part of the land listed under article 24 (compulsory acquisition of rights etc.) to the extent that such land is listed in column (1) of Schedule 7 (land in which only new rights etc., may be acquired); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 28 (acquisition of subsoil only).

(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 acquiring authority) applies to the temporary use of land pursuant to this article to the same extent 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) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 7 (land in which only new rights etc., may be acquired).

(12) Subject to article 46 (Crown rights), so much of the special category land as is required for the purposes of exercising the powers pursuant to this article is temporarily discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be

inconstant with the exercise of those powers, and only for such time as any special category land is being used under this article.

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

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

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

(3) Except in the case of emergency relating to health and safety, not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

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

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

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

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

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the 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 acquiring authority) applies to the temporary use of land pursuant to this article to the same extent it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period” means—

- (a) in relation to the maintenance of any tree, hedge or shrub planted as part of an approved landscape management plan, the period of 10 years beginning with the date of completion of commissioning of the authorised development;
- (b) in relation to any other part of the authorised development, the period of five years beginning with the date of completion of commissioning of the authorised development.

(12) So much of the special category land as is required for the purposes or exercising the powers pursuant to this article is temporarily discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the

exercise of those powers, and only for such time as any special category land is being used under this article.

Statutory undertakers

33. Subject to the provisions of Schedule 14 (protective provisions) the undertaker may—

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

Recovery of costs of new connections

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

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

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

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

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this paragraph—

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

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

Funding

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

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 21 (compulsory acquisition of land);
- (b) article 24 (compulsory acquisition of rights etc.);
- (c) article 25 (private rights);

- (d) article 28 (acquisition of subsoil only);
- (e) article 30 (rights under or over streets);
- (f) article 31 (temporary use of land for carrying out the authorised development);
- (g) article 32 (temporary use of land for maintaining the authorised development); and
- (h) article 33 (statutory undertakers).

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

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

(5) Nothing in this article requires a guarantee or alternative form of security to be put in place by the undertaker where—

- (a) the undertaker provides the Secretary of State with financial information sufficient to demonstrate that it has appropriate funding in place without a guarantee or alternative form of security to meet any liability to pay compensation under this Order in respect of the exercise of the relevant powers in paragraph (2); and
- (b) the Secretary of State provides written confirmation that no such guarantee is required, such written confirmation not to be unreasonably withheld.

PART 6

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

36.—(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 and 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 least of any obligation of any other party under the lease.

Operational land for the purposes of the 1990 Act

37. Development consent granted by this Order is 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 not being operational land).

Felling or lopping of trees and removal of hedgerows

38.—(1) Subject to paragraph (3) and article 39 (trees subject to tree preservation orders), the undertaker may fell or lop or cut back the roots of any tree or shrub within, overhanging or encroaching upon land within the Order limits, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the onshore site preparation works, 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 within, using or carrying out works on the authorised development; or
- (c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) Without limitation to the scope of paragraph (1) the undertaker may, for the purpose of the authorised development—

- (a) remove the hedgerows specified in Schedule 11, Part 1 (removal of hedgerows) to the extent and for the purpose specified; and
- (b) remove the important hedgerows within the Order limits and specified in Schedule 11, Part 2 (removal of important hedgerows) to the extent and for the purpose specified.

(3) In carrying out any activity authorised by paragraph (1) or (2), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub; and
- (b) pay compensation to any person for any loss or damage arising from such activity.

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

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(a).

Trees subject to tree preservation orders

39.—(1) The undertaker may fell or lop or cut back the roots of any tree within, overhanging or encroaching upon land within the Order limits subject to a tree preservation order, if it reasonably believes it to be necessary to do so in order to prevent the tree—

- (a) from obstructing or interfering with onshore site preparation works, the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting an unacceptable source of danger.

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

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

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

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

(a) S.I. 1997/1160.

(5) In this article, “tree preservation order” has the same meaning as in section 198 (power to make tree preservation orders) of the 1990 Act.

Certification of plans and documents, etc.

40.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents listed in Schedule 12 (documents to be certified) 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.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in this Order as made,

the reference in the plan or document concerned must be construed for the purpose of this Order as referring to the provision (if any) corresponding to that provision in this Order as made.

Arbitration

41.—(1) Subject to article 45 (saving provisions for Trinity House), any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 13 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order will not be subject to arbitration.

Consents, approvals, etc.

42.—(1) Where an application is made to a relevant authority for any consent, agreement or approval required or contemplated by any of the articles of this Order such consent, agreement or approval, if given, must be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application 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 received, the relevant authority is deemed to have given its consent, agreement or approval as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) The appeals procedure set out at paragraph 7 of Schedule 3 (procedure for discharge of requirements) has effect in relation to an application under this article where a consent, agreement or approval is granted subject to any condition to which the undertaker objects, or is refused or is withheld.

(5) In this article—

“application” means an application or request for any consent, agreement or approval required or contemplated by articles 11 (construction and maintenance of new or altered highway), 12 (temporary closure, alteration or diversion of public rights of way), 13 (temporary restriction of use of streets), 14 (access to works), 15 (traffic regulation), 16 (power to alter layout etc. of streets), 18 (discharge of water) and 20 (authority to survey and investigate land onshore); and

“relevant authority” means a relevant planning authority, a traffic authority, a highway authority, a street authority, or an owner of a public sewer or drain as defined in article 18 (discharge of water).

Requirements, appeals, etc.

43. Schedule 3 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements include in Schedule 2 (requirements).

Abatement of works abandoned or decayed

44. Where the offshore works, or any part of them, is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense either to repair, make safe and restore one or any of those works, or any relevant part of them, or to remove them or any relevant part and, without prejudice to any notice served under section 105(2) (requirement to prepare decommissioning programmes) of the 2004 Act, restore the site to a safe and proper condition, to such an extent and within such limits as may be specified in the notice.

Saving provisions for Trinity House

45. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown rights

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

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

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

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

Protective provisions

47. Schedule 14 (protective provisions) has effect.

No double recovery

48. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or rule of law, or under two or more different provisions of this order.

Service of notices

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

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

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

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

- (a) in the case of the secretary or clerk of that 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 an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

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

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

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

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

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

(8) Where a person is no longer will 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 seven days after the date on which the notice is given.

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

(10) In this article “legible in all material respects” means that the information contained in the notice of 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.

Inconsistent planning permissions

50.—(1) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits and which does not constitute any part of the authorised development, then the carrying out of development pursuant to that planning permission does not constitute a breach of the terms of this Order.

(2) To the extent any development carried out or used pursuant to a planning permission granted under section 57 (Planning permission required for development) of the 1990 Act or compliance with any conditions of that permission is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development—

- (a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission is capable of physical implementation; and
- (b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that planning permission, or compliance with any conditions of that permission, whether inside or outside the Order limits.

(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission granted under section 57 of the 1990 Act including permissions falling under paragraphs (1) or (2) or otherwise is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out, or continuing to be carried out, or used, or any other power or right under this Order being exercised.

(4) In paragraph (2), “enforcement action” means any enforcement action provided for under Part 7 of the 1990 Act.

Signed by authority of the Secretary of State for Energy Security and Net Zero

Address
Date

Signature
Title

Department for Energy Security and Net Zero

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

PART 1

AUTHORISED DEVELOPMENT

Development for which, in accordance with a direction made by the Secretary of State on 5 March 2024 under section 35 of the 2008 Act, development consent is required and which is located in the North Sea in English waters up to approximately [•] kilometres from the northeast and within the local authority area of Durham County Council, comprising works to be carried out in the areas shown on the works plans—

Offshore works

Work No. 1— installation of one subsea export cable circuit between the seaward boundary of English offshore waters and Work No. 2A including cable crossings and cable protection;

Work No. 2A—

- (a) installation of one cable circuit between Work No. 1 and Work No. 2B including cable ducts and cable crossings;
- (b) trenchless installation technique works including the creation of up to four entry or exit pits;

Intertidal works – Between MHWS and MLWS and in the County of Durham

Work No. 2B— one buried cable circuit between Work No. 2A and Work No. 2C including cable ducts and trenchless installation technique works;

Onshore works – In the County of Durham

Work No. 2C— one buried cable circuit between Work No. 2B and Work No. 3 including cable ducts and trenchless installation works;

Work No. 2D— access during construction, operation, maintenance and decommissioning;

Work No. 3—

- (a) installation of one buried cable circuit between Work No. 2C and Work No. 4 including cable ducts;
- (b) installation of up to two transition joint bays;
- (c) trenchless installation technique works including the creation of up to four entry or exit pits for trenchless installation techniques;
- (d) cable trenching works; and
- (e) temporary construction compounds;

Work No. 4—

- (a) installation of one buried cable circuit between Work No. 3 and Work No. 6 including cable ducts;
- (b) trenchless installation technique works including the creation of entry or exit pits for trenchless installation techniques; and

- (c) cable trenching works;

Work No. 5— temporary construction compounds, including provision of site offices, welfare facilities and stores, lay down space and storage for plant;

Work No. 6—

- (a) installation of one buried cable circuit between Work No. 4 and Work No. 8 including cable ducts;
- (b) trenchless installation technique works including the creation of entry or exit pits for trenchless installation techniques; and
- (c) cable trenching works;

Work No. 7— temporary construction compounds, including provision of site offices, welfare facilities and stores, lay down space and storage for plant;

Work No. 8— creation of the substation area including—

- (a) land re-profiling and creation of platform or foundations for Work No. 8A;
- (b) permanent landscaping, ecological and environmental works;
- (c) utilities connections;
- (d) drainage works including connections to existing drainage and creation of new sustainable drainage;
- (e) access during construction, operation, maintenance and decommissioning;
- (f) installation of one buried cable circuit from Work No. 6 to Work No. 8A including cable ducts;
- (g) installation of up to four buried cable circuits from Work No. 8A to Work No. 9 including cable ducts;
- (h) trenchless installation technique works including the creation entry or exit pits for trenchless installation techniques;
- (i) cable trenching works; and
- (j) fencing;

Work No. 8A— construction of an onshore HVDC/HVAC converter substation and associated infrastructure including switchgear and electrical equipment such as high voltage reactors, high voltage power electronic converters, smoothing reactors, power transformers, harmonic filters, cooling equipment, control and welfare buildings, lightning protection, internal access roads, security fencing, security gates and other associated equipment, lighting, structures and buildings including noise attenuation works if required, together with, AC and DC switchgear, DC cable sealing-end compounds, cooling systems (including pumps, radiators and heat-exchange units), auxiliary power systems (UPS and standby generation), SCADA and telecommunications systems, earthing and surge-protection equipment, and utilities connections;

Work No. 9—

- (a) installation of up to four buried cable circuits between Work No. 8A and Work No. 10 including cable ducts;
- (b) trenchless installation technique works including the creation of entry or exit pits for trenchless installation techniques; and
- (c) cable trenching works;

Work No. 10— electrical works to connect to the National Grid Substation including—

- (a) works needed to connect the authorised development to the National Grid Substation that National Grid is not required, under its transmission licence, to carry out itself including cabling, cable sealing ends, circuit breakers, surge arrestors, disconnectors, transformers, busbars and busbar clamp measuring equipment, relay marshalling rooms and electrical earthing works;

- (b) installation of up to four buried cable circuits including cable ducts;
- (c) trenchless installation technique works including the creation of entry or exit pits for trenchless installation techniques; and
- (d) cable trenching works;

Work No. 11— works to facilitate access (including vehicular access) to Work Nos. 2D to 12 including—

- (a) creation and improvement of accesses including works to junctions and visibility splays; and
- (b) use of access from the public highway;

Work No. 12— area of search for habitat management and biodiversity net gain works including—

- (a) landscape and biodiversity mitigation and enhancement measures;
- (b) habitat creation and management, including earthworks, landscaping, and the laying and construction of drainage infrastructure and means of access; and
- (c) fencing, gates, boundary treatment and other means of enclosure.

PART 2

ASSOCIATED DEVELOPMENT

In connection with Work Nos. 1, 2A and 2B and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) cable protection measures such as rock placement and/or concrete mattresses, with or without frond devices;
- (b) dredging;
- (c) the removal of material from the seabed required for the construction of Work Nos. 1, 2A and 2B and the disposal of inert material of natural origin and/or dredged material within Work Nos. 1 and No. 2A produced during cable installation preparation such as sandwave clearance, boulder clearance, pre-trenching, and excavation of drilling pits for trenchless installation techniques;
- (d) intrusive activities including anchoring of vessels, jacking up vessels, depositing soil and seabed clearance, temporary wet storage areas, and use of temporary installation aids;
- (e) removal of static fishing equipment; and
- (f) lighting,

and in connection with Work Nos. 2C to 12 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) haul roads, ramps, watercourse and other temporary crossings, means of access and other vehicular and/or pedestrian means of access, including creation of new tracks and footpaths, and/or widening, upgrades, alterations and improvements of existing roads, tracks and footpaths;
- (b) bunds, embankments, swales, landscaping, fencing and boundary treatments;
- (c) provision of temporary and permanent landscaping, ecological and environmental mitigation and compensation works;
- (d) spoil storage and associated control measures;

- (e) jointing bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable markers, tiles and tape, and lighting and other works associated with laying cables and/or pulling cables through cable ducts;
- (f) works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems, temporary drainage during installation of cables and culverting;
- (g) works to alter the position of apparatus, including mains, sewers, drains and cables (overhead and underground);
- (h) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (i) working sites in connection with the construction of the authorised development including mobile welfare units, lay down areas, compounds and compound storage;
- (j) works of restoration and enhancement;
- (k) fencing or other means of enclosure; and
- (l) temporary and permanent drainage.

PART 3

ANCILLARY WORKS

Works within the Order limits which fall within the scope of the work assessed by the environmental statement comprising—

- (a) intrusive ground investigations including the making of boreholes and trial pits;
- (b) temporary landing places, moorings or other means of accommodating vessels in the construction, maintenance and/or decommissioning of the authorised development;
- (c) marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- (d) works for the benefit or protection of land, watercourses or structures affected by the authorised development.

SCHEDULE 2

REQUIREMENTS

Time limits

1. The authorised development must not commence after the expiration of seven years beginning with the date this Order comes into force.

Offshore design parameters

2.—(1) The offshore works must be located within the area delineated by the co-ordinates in the following table and shown on sheet [•] of the indicative extent of marine licence and grid coordinates plan—

(1) <i>Point</i>	(2) <i>Latitude</i>	(3) <i>Longitude</i>

(2) The offshore works must be constructed in accordance with the parameters set out in the following table—

(1) <i>Parameter</i>	(2) <i>Value</i>
Maximum number of export cable circuits	1
Maximum total length of export cables (km)	[•]
Maximum total area of cable protection (m2)	[•]
Maximum total volume of cable protection (m3)	[•]
Maximum number of export cable crossings	[•]

Stages of authorised development onshore

3.—(1) The onshore works may not be commenced until notification has been submitted to the discharging authority detailing whether the onshore works will be constructed—

- (a) in a single stage; or
- (b) in two or more stages.

(2) The onshore works must not be commenced until written details of the stages of the onshore works have been submitted to the discharging authority.

(3) The construction of the onshore works must follow the written details provided under subparagraph (2) of this requirement.

Substation works

4.—(1) Construction of Work No. 8A (onshore substation) must not commence until written details of that Work have been submitted to and approved by the discharging authority, and the written details submitted must include—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external hard surfacing materials;

- (e) the dimensions, external colour and materials used for the buildings;
- (f) security fencing, height, colour and materials;
- (g) vehicular and pedestrian access, parking and circulation areas;
- (h) operational external lighting; and
- (i) proposed and existing functional services above and below ground, including drainage, surface water drainage, power and communications cables and pipelines, manholes and supports.

(2) The written details submitted under sub-paragraph (1) of this requirement must be in accordance with requirement 5 (detailed design parameters onshore) and be based on the outline design principles.

(3) Work No. 8A must be carried out in accordance with the approved written details.

Detailed design parameters onshore

5.—(1) The onshore works must not exceed the parameters set out in the following table and sub-paragraph (2)—

<i>(1)</i> <i>Parameter</i>	<i>(2)</i> <i>Value</i>
Maximum number of landfall transition joint bays	2
Maximum number of cable circuits	1
Maximum number of cable trenches	2
Maximum total length of onshore cables (km)	[8.4]

(2) Trenchless installation techniques must be used to install the cable ducts and electrical circuits where identified in the onshore crossing schedule for the purpose of passing under a relevant obstruction unless otherwise agreed by the discharging authority, following consultation with the [lead local flood authority, the Environment Agency, and the relevant highway authority as appropriate].

(3) In relation to Work No. 8A (onshore substation)—

- (a) the highest part of any building, any external electrical equipment or enclosure, excluding lightning rods, must not exceed a height of [30]m above ordnance datum;
- (b) the total area of the fenced compound (excluding its accesses) must not exceed [•]m²; and
- (c) the lightning rods within the fenced compound must not exceed a height of [35]m above ordnance datum.

Provision of landscaping

6.—(1) Work No. 8A must not be commenced until a written landscaping scheme and associated work programme in accordance with the outline landscape and ecological management plan for Work No. 8 has been submitted to and approved by the discharging authority.

(2) The written landscaping scheme must include details of all proposed hard and soft landscaping works including—

- (a) location, number, species, size and planting density of any proposed planting including any trees; and
- (b) implementation timetables for all landscaping works within Work No. 8.

Implementation and maintenance of landscaping

7.—(1) All landscaping works must be carried out in accordance with the landscaping schemes approved under requirement 6 (provision of landscaping).

(2) Onshore site preparation works must only take place in accordance with the relevant details set out in the outline landscape and ecological management plan.

(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a rolling period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless a different species is otherwise agreed with the discharging authority.

Code of construction practice

8.—(1) No stage of the onshore works or the intertidal works may commence until a code of construction practice for that stage has been submitted to and approved by the discharging authority in consultation as appropriate with the relevant SNCB, the Environment Agency, and if applicable, the MMO.

(2) The code of construction practice must accord with the outline code of construction practice and include, as appropriate to the relevant stage—

- (a) communications plan (in accordance with the outline communications plan);
- (b) dust management plan (in accordance with the outline dust management plan);
- (c) public rights of way management plan (in accordance with the outline public rights of way management plan);
- (d) pollution prevention plan (in accordance with the outline pollution prevention plan);
- (e) site waste management plan (in accordance with the outline site waste management plan);
- (f) soil management plan (in accordance with the outline soil management plan);
- (g) spillage and emergency response plan (in accordance with the outline spillage and emergency response plan);
- (h) surface water and groundwater management plan (in accordance with the outline surface water and groundwater management plan);
- (i) biosecurity protocol (in accordance with the outline biosecurity protocol);
- (j) construction fencing plan (in accordance with the outline construction fencing plan);
- (k) construction artificial light emissions management plan (in accordance with the outline construction artificial light emissions management plan);
- (l) construction noise and vibration management plan (in accordance with the outline construction noise and vibration management plan);
- (m) bentonite breakout plan (in accordance with the outline bentonite breakout plan);
- (n) contaminated land and groundwater discovery strategy (in accordance with the outline contaminated land and groundwater discovery strategy);
- (o) landfall construction method statement (in accordance with the outline landfall construction method statement); and
- (p) onshore construction method statement (in accordance with the outline onshore construction method statement).

(3) The code of construction practice approved in relation to the relevant stage of the onshore works and the intertidal works must be followed in relation to that stage of the onshore works and the intertidal works.

Construction traffic management plan

9.—(1) No stage of the onshore works may commence until for that stage a construction traffic management plan (which must accord with the outline construction traffic management plan), as appropriate for the relevant stage, has been submitted to and approved by the relevant highway authority, in consultation with National Highways in respect of the strategic road network.

(2) The onshore works must be carried out in accordance with the approved construction traffic management plan for the relevant stage.

Highway accesses

10.—(1) No new temporary or permanent means of access to a highway to be used by vehicular traffic, or any temporary or permanent alteration to an existing means of access to a highway used by vehicular traffic may be formed until a highways access management plan (which must be in accordance with the outline highways access management plan) for that new or altered access have been submitted to and approved by the relevant highway authority.

(2) The highway accesses must be constructed in accordance with the approved written details.

Onshore archaeology

11.—(1) No stage of the onshore works may commence until, for that stage, an archaeological written scheme(s) of investigation in accordance with the outline onshore written scheme(s) of investigation as appropriate for the relevant stage has been submitted to and approved by the discharging authority in consultation with Historic England.

(2) The onshore works must be carried out in accordance with the written scheme(s) of investigation as applicable in each stage as approved under sub-paragraph (1).

(3) Intrusive onshore site preparation works, including those necessary to allow production of a scheme required under sub-paragraph (1), must only take place in accordance with the applicable details set out in the outline onshore written scheme(s) of investigation.

(4) For the purposes of this requirement “intrusive” in relation to onshore site preparation works means works within the onshore Order limits that require the breaking of the surface of the land.

Ecological management plan

12.—(1) No stage of the onshore works may commence until for that stage an ecological management plan in accordance with the outline landscape and ecological management plan as appropriate for the relevant stage, has been submitted to and approved by the discharging authority in consultation with the relevant SNCB, and the Environment Agency where works have the potential to impact wetland habitats.

(2) The ecological management plan(s) submitted under sub-paragraph (1) must include an implementation timetable and must be implemented as approved.

(3) Onshore site preparation works must only take place in accordance with the relevant details set out in the outline landscape and ecological management plan.

European protected species: onshore

13.—(1) No stage of the onshore works other than surveying and investigation necessary to comply with this requirement may commence until, for that stage, pre-construction survey work has been carried out to establish whether a European protected species or nationally protected species under the Wildlife and Countryside Act 1981 is present on any of the land affected, or likely to be affected, by any part of that stage of the onshore works.

(2) Where a European protected species or nationally protected species under the Wildlife and Countryside Act 1981 is shown to be present, the relevant stage of the onshore works likely to affect the species must not commence until a scheme of protection and mitigation measures for that stage has been submitted to the discharging authority or a European protected species licence is granted by the relevant SNCB.

(3) Each stage of the onshore works which requires a scheme of protection and mitigation measures in accordance with sub-paragraph (2) of this requirement must be carried out in accordance with the approved scheme.

(4) In this paragraph—

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017; and

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981.

Restoration of land used temporarily for construction

14. Any land landward of MLWS within the Order limits which is used temporarily for construction of the onshore works or intertidal works and not ultimately incorporated in permanent works or approved landscaping or ecological works must be reinstated within twelve months of completion of the relevant stage of the onshore works or intertidal works, unless otherwise agreed with the discharging authority.

Control of noise during operational stage

15.—(1) Prior to the commencement of operation of Work No. 8A, an operational noise management plan must be submitted to and approved by the discharging authority.

(2) The operational noise management plan must set out the particulars of—

- (a) any necessary noise attenuation and mitigation measures to be taken to minimise noise resulting from Work No. 8A, including any noise limits; and
- (b) a scheme for monitoring attenuation and mitigation measure provided under paragraph (a) which must include—
 - (i) the circumstances under which noise will be monitored;
 - (ii) the locations at which noise will be monitored;
 - (iii) the method of noise measurement (which must be in accordance with BS 4142:2014+A1:2019, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances); and
 - (iv) a complaints procedure.

(3) The operational noise management plan must be implemented as approved unless otherwise agreed with the discharging authority.

Biodiversity net gain

16.—(1) Work No. 8A must not be commenced until a biodiversity net gain assessment (which must accord with the outline biodiversity net gain plan) in relation to that stage has been submitted to and approved by the discharging authority in consultation with the relevant SNCB.

(2) The biodiversity net gain assessment must be implemented as approved.

Operational Drainage Plan

17.—(1) No part of Work No. 8 may commence until an operational drainage management plan for operation of that part has been submitted to and approved by the discharging authority in consultation with the Environment Agency and the lead local flood authority.

(2) The operational drainage plan must be in accordance with the outline operational drainage management plan.

(3) The operational drainage plan must be implemented as approved.

Offshore decommissioning

18.—(1) The offshore works must not be commenced until a written offshore decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State

pursuant to section 105(2) (requirement to prepare decommissioning programmes) of the 2004 Act has been submitted to the Secretary of State for approval.

(2) The undertaker must provide a copy of the written decommissioning programme submitted to the Secretary of State for approval under sub-paragraph (1) to the MMO.

Onshore decommissioning

19.—(1) An onshore decommissioning plan for the onshore works must be submitted to and approved by the discharging authority at least six months prior to any decommissioning works commencing.

(2) The discharging authority must provide its decision on any onshore decommissioning plan submitted under sub-paragraph (1) within three months of submission of each plan unless otherwise agreed in writing between the discharging authority and the undertaker.

(3) The onshore decommissioning plan must be implemented as approved in the carrying out of any decommissioning works or relevant part of it.

Requirement for written approval

20. Where under any of the above requirements the approval or agreement of the Secretary of State, the discharging authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

21. With respect to any requirement which requires the authorised development to be carried out in accordance with the written details, plan, strategy, scheme or other document approved under this Schedule, the approved written details, plan, strategy, scheme or other document are taken to include any amendments that may subsequently be approved or agreed by the Secretary of State, the discharging authority or another person.

COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act) of the Morven Hawthorn Pit Grid Connection Project Order 202[] in respect of the land to which the notice to treat relates.

(2) But see article 28 (acquisition of subsoil only) of the Morven Hawthorn Pit Grid Connection Project Order 202[] which excludes the acquisition of subsoil only from this Schedule.

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

Counter-notice requiring purchase of land

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

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

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

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

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

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

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

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

Determination by the Upper Tribunal

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

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or

- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

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

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

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

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

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph, it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 3

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

1. In this Schedule “application” means—

- (a) an application for any consent, agreement or approval required by a requirement whether or not the application seeks to discharge a requirement in whole or in part; or
- (b) an application as defined in article 42 (consents, approvals, etc.), with respect to paragraph 7 (appeals) of this Schedule only.

2. In this Schedule “discharging authority” means—

- (a) any body responsible for giving any consent, agreement or approval required by a requirement included in Schedule 2, or for giving any consent, agreement or approval further to any document referred to in any such requirement;
- (b) the relevant planning authority in the exercise of its functions set out in section 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 subsequently referred to as “the 1974 Act”;
- (c) a relevant authority as defined in article 42 (consents, approvals, etc.), with respect to paragraph 7 (appeals) of this Schedule only.

Applications made under requirements

3.—(1) Where an application has been made to the discharging authority for any agreement or approval required pursuant to a requirement included in this Order, the relevant discharging authority must give notice to the undertaker of their decision, including the reasons, on the application, within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the relevant discharging authority; or
- (b) such other period as may be specified in a requirement or otherwise agreed by the undertaker and the relevant discharging authority.

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

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

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

(3) In the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

Further information

4.—(1) Where an application has been made under sub-paragraph 3, the discharging authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 15 days

of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement indicates that consultation must take place with a consultee the discharging authority must issue the consultation to the requirement consultee within five working days of receipt of the application. Where the consultee requires further information, they must notify the discharging authority in writing specifying the further information required within ten days of receipt of the consultation. The discharging authority must notify the undertaker in writing specifying any further information requested by the consultee within five working days of receipt of such a request.

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

Provision of information by Consultees

5.—(1) Any consultee who receives a consultation under paragraph 4(3) must respond to that request within 15 days from receipt unless sub-paragraph (2) of this paragraph applies, or a longer period if agreed with both the undertaker and the discharging authority.

(2) Where any consultee requests further information in accordance with the timescales set out in paragraph 4(3) then they must respond to the consultation within ten working days from the receipt of the further information requested, or a longer period if agreed with both the undertaker and the discharging authority.

Fees

6.—(1) Where an application is made to the discharging authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (or any regulations replacing the same) is to be paid by the undertaker to the discharging authority in accordance with these regulations unless a bespoke arrangement has been agreed between the applicant and discharging authority and legally secured.

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

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within ten weeks from the relevant date in paragraph 3(1) unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 3(1) of this Schedule.

Appeal

7.—(1) The undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required by—
 - (i) a requirement contained in Schedule 2 of this Order; or
 - (ii) a document referred to in any requirement contained in Schedule 2 of this Order;
- (b) the discharging authority grants such an application subject to conditions;

(a) S.I. 2012/2920.

- (c) the discharging authority issues a notice further to section 60 (control of noise on construction sites) or section 61 (prior consent for work on construction sites) of the 1974 Act;
- (d) the discharging authority does not give notice of its decision to the undertaker within the time period specified in paragraph 3;
- (e) on receipt of a request for further information under paragraph 4 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for the consideration of the application; or
- (f) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers not necessary for the consideration of the application.

(2) The appeal process is to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person (“the appointed person”) to determine the appeal and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) the discharging authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within ten working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten working days of receipt of written representations pursuant to paragraph (c); and
- (e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to paragraph (d).

(3) The appointment of the appointed person pursuant to sub-paragraph (2)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to consider the appeal, the appointed person must notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must make any notification and set the date for the receipt of such further information having regard to the timescales in sub-paragraph (2).

(5) Any further information required under sub-paragraph (4) must be provided by the appeal party from whom the further information was requested to the appointed person and other appeal parties, the discharging authority and any consultee required to be consulted pursuant to the requirement the subject of the appeal on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten working days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e).

(6) On an appeal under this sub-paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not).

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

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

(9) The decision of the appointed person on an appeal is to be 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.

(10) If an approval is given by the appointed person pursuant to this paragraph, it is to be deemed to be an approval for the purpose of Schedule 3 (procedure for discharge of requirements) as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.

SCHEDULE 4

Article 9

STREETS AND PUBLIC RIGHTS OF WAY SUBJECT TO STREET WORKS

<i>(1)</i> <i>Street or public right of way</i>	<i>(2)</i> <i>Extent as shown on the street plan or public rights of way plan</i>

SCHEDULE 5
TRAFFIC REGULATION

Articles 12, 13 and 15

PART 1

STREETS TO BE TEMPORARILY CLOSED OR RESTRICTED

<i>(1)</i> <i>Street to be temporarily closed or restricted</i>	<i>(2)</i> <i>Extent as shown on the street works plan</i>

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED, ALTERED OR
DIVERTED

<i>(1)</i> <i>Public right of way to be temporarily closed, altered or diverted</i>	<i>(2)</i> <i>Extent as shown on the public rights of way plan</i>

PART 3

SPEED LIMITS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed limit</i>

SCHEDULE 6
ACCESS TO WORKS

Article 14

<i>(1)</i> <i>Street</i>	<i>(2)</i> <i>Location of access</i>	<i>(3)</i> <i>Purpose for which access is required</i>

SCHEDULE 7

Article 24

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

<i>(1)</i> <i>Number of plot shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>

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 or imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification—

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

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 5(5) of Schedule 8 to the Morven Hawthorn Pit Grid Connection Project Order 202[]);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 5(8) of Schedule 8 to the Morven Hawthorn Pit Grid Connection Project Order 202[]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of sub-section (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3) of this Schedule—

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

Application of Part 1 of the 1965 Act

4.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29 (modification of Part 1 of the 1965 Act) to the acquisition of land under article 21 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 24 (compulsory acquisition of rights etc.)—

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

(a) 1973 c. 26.

5.—(1) The modifications referred to in paragraph 4 are set out in the following provisions of this Schedule.

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

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

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

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

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

- (a) section 9(4) (refusal to convey, failure to make title, etc.);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests) (conveyance of the land or interest);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by sub-section (1) of that section (as it applies to a compulsory acquisition), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act is modified so 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.

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

(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
(b) Section 11B was inserted by section 187(2) of the above Act.

SCHEDULE 9

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Number of plot shown on land plans</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>
-	-	-
-	-	-
-	-	-
-	-	-

SCHEDULE 10

Article 4

DEEMED MARINE LICENCE UNDER THE 2009 ACT

PART 1

LICENSED MARINE ACTIVITIES

PART 2

CONDITIONS

SCHEDULE 11
HEDGEROWS

Article 38

PART 1
REMOVAL OF HEDGEROWS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Hedgerow reference and extent of removal</i>

PART 2
REMOVAL OF IMPORTANT HEDGEROWS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Hedgerow reference and extent of removal</i>

SCHEDULE 12
DOCUMENTS TO BE CERTIFIED

Article 40

PART 1

**DOCUMENTS FORMING THE ENVIRONMENTAL STATEMENT TO BE
CERTIFIED**

1. The following documents are included in the list referred to in article 40—

<i>(1)</i> <i>Document Reference Number</i>	<i>(2)</i> <i>Examination Library Reference</i>	<i>(3)</i> <i>Document Name</i>	<i>(4)</i> <i>Revision</i>	<i>(5)</i> <i>Date</i>

PART 2

**EXAMINATION DOCUMENTS FORMING PART OF THE ENVIRONMENTAL
STATEMENT TO BE CERTIFIED**

2. The following documents are included in the list referred to in article 40—

<i>(1)</i> <i>Document Reference Number</i>	<i>(2)</i> <i>Examination Library Reference</i>	<i>(3)</i> <i>Document Name</i>	<i>(4)</i> <i>Revision</i>	<i>(5)</i> <i>Date</i>

PART 3

OTHER DOCUMENTS TO BE CERTIFIED

3. The following documents are included in the list referred to in article 40—

<i>(1)</i> <i>Document Number</i>	<i>(2)</i> <i>Examination Library Reference</i>	<i>(3)</i> <i>Name</i>	<i>(4)</i> <i>Version</i>	<i>(5)</i> <i>Date</i>

SCHEDULE 13

ARBITRATION RULES

Article 41

Primary objective

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within four months from the date the arbitrator is appointed pursuant to article 41 (arbitration) of the Order.

(2) The parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the parties. Any dispute which is not resolved amicably by the senior management of the parties within twenty working days of the dispute arising, or such longer period as agreed in writing by the parties, will be subject to arbitration in accordance with the terms of this Schedule.

(3) The arbitration will be deemed to have commenced when a party (the “claimant”) serves a written notice of arbitration on the other party (the “respondent”).

Time periods

2.—(1) All time periods in these arbitration rules will be measured in working days and this will exclude weekends and bank holidays.

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

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

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

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

(3) Within 15 days of receipt of the claimant’s statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

- (a) a written statement of defence responding to the claimant’s statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant’s claim, its acceptance of any element(s) of the claimant’s claim, its contentions as to those element(s) of the claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the claimant’s statements, comments on the claimant’s expert report(s) (if submitted by the claimant) and explanations for the objections.

(4) Within five days of the respondent serving its statements sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

- (a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the respondent's submissions;
- (c) any expert report in response to the respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

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

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

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

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

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

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

- (a) at least 20 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within ten days of the issues being provided; and
- (c) the form and content of a joint report will be as directed by the arbitrator and must be provided at least five days before the hearing.

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

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

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

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

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996^(a), including the non-mandatory sections, save where modified by these rules.

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

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

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

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

Costs

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

(2) Subject to sub-paragraph (3), the arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be confidential and will only be publicly disclosed where required by law or with the agreement of both parties.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph prevents any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

(a) 1996 c. 23.

SCHEDULE 14
PROTECTIVE PROVISIONS

Article 47

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation, maintenance and decommissioning of an offshore wind farm transmission system located within English offshore waters, within the 12 nautical mile inshore area and landward. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

This Order also grants a deemed marine licence under Part 4 of the Marine and Coastal Access Act 2009 in connection with the transmission system. The deemed marine licence imposes conditions in connection with the marine licensable activities.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 40 (certification of plans and documents, etc.) of this Order may be inspected free of charge at the offices of Durham County Council at [•].