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STATUTORY INSTRUMENTS

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**2014 No. 2434**

**INFRASTRUCTURE PLANNING**

**The North Killingholme (Generating Station) Order 2014**

*Made* - - - - *11th September 2014*

*Coming into force* - - *2nd October 2014*

The undertaker has applied to the Secretary of State for an order granting development consent in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(1);

The application was examined by an Examining authority appointed by the Secretary of State under Part 4 of the Planning Act 2008 (the “Act”)(2) and the Infrastructure Planning (Examination Procedure) Rules 2010(3);

The Examining authority, having considered the application with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act made a report and recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the Examining authority, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make substantial change to the proposals;

The Secretary of State has decided to grant development consent and, under sections 114, 115, 120 and 149A of the 2008 Act, to make the following Order—

**Citation and commencement**

1. This Order may be cited as the North Killingholme (Generating Station) Order 2014 and shall come into force on 2nd October 2014.

**Interpretation**

2. (1) In this Order—

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(1) [S.I. 2009/2264](#) as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 ([S.I. 2012/635](#)) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 ([S.I. 2013/522](#)). There are other amendments to the Regulations which are not relevant to this Order.

(2) [2008 c.29](#). Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 ([c.20](#)), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 ([c.27](#)), see [S.I. 2013/1124](#) for transitional provisions. Section 149A was inserted by section 112(1) of, and paragraph 4 of Part 1 of Schedule 8 to, the Marine and Coastal Access Act 2009 ([c.33](#)).

(3) [S.I. 2010/103](#), as amended by [S.I. 2012/635](#).

“the 1961 Act” means the Land Compensation Act 1961(4); “the 1965 Act” means the Compulsory Purchase Act 1965(5);

“the 1980 Act” means the Highways Act 1980(6);

“the 1990 Act” means the Town and Country Planning Act 1990(7);

“the 1991 Act” means the New Roads and Street Works Act 1991(8);

“the 2008 Act” means the Planning Act 2008;

“authorised development” means the development described in Part 1 of Schedule 1 and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commence”, unless otherwise provided, means beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” shall be construed accordingly;

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

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

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- (4) [1961 c.33](#). Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act [1980 \(c.65\)](#). There are other amendments to the 1961 Act which are not relevant to this Order.
- (5) [1965 c.56](#). Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act [1991 \(c.34\)](#). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act [1985 \(c.71\)](#). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 10 to, the Planning and Compensation Act [1991 \(c.34\)](#). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act [1981 \(c.67\)](#) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 ([2006 No. 1](#)). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act [1981 \(c.23\)](#). Section 13 was amended by section 139 of the Tribunals Courts and Enforcement Act [2007 \(c.15\)](#). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act [1991 \(c.34\)](#). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act [1973 \(c.39\)](#) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 ([2006 No. 1](#)). There are other amendments to the 1965 Act which are not relevant to this Order.
- (6) [1980 c.66](#). Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act [1991 \(c.22\)](#); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act [1985 \(c.51\)](#); section 1(2A) was inserted, and section 1(3) was amended, by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act [1994 \(c.19\)](#). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act [1985 \(c.71\)](#), by S.I. [2006/1177](#), by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act [1990 \(c.11\)](#), by section 64(1) (2) and (3) of the Transport and Works Act [1992 \(c.42\)](#) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act [2000 \(c.37\)](#); section 36(A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. [2006/1177](#); section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act [1985 \(c.51\)](#); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act [1994 \(c.19\)](#). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act [1989 \(c.29\)](#) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act [1989 \(c.15\)](#). There are other amendments to the 1980 Act which are not relevant to this Order.
- (7) [1990 c.8](#). Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act [2008 \(c.29\)](#) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (8) [1991 c.22](#). Section 48(3A) was inserted by section 124 of the Local Transport Act [2008 \(c.26\)](#). Sections 79(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act [2004 \(c.18\)](#).

“footpath diversion zone” means the area or areas of land marked as such on the land plans;

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

“land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation for the scheduled works shown on the works plans;

“maintain” includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct any part (but not the whole), decommission, replacement of any part (but not the whole) and improve, but not so as to vary from the description of the authorised development in Schedule 1 and only to the extent assessed in the environmental statement, and “maintenance” shall be construed accordingly;

“Order land” means the land shown on the land plans within the Order limits which is land over which it is proposed to exercise powers of compulsory acquisition or any right to use land, and land subject to powers to extinguish, suspend or interfere with easements, servitudes or other private rights described in the book of reference;

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

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981<sup>(9)</sup>;

“public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker;

“relevant planning authority” means North Lincolnshire Council;

“requirements” means those matters set out in Part 3 of Schedule 1 to this Order;

“scheduled works” means the numbered works specified in Schedule 1 to this Order, or any part of them;

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

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

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

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

“undertaker” means C.GEN Killingholme Limited, which is the named undertaker, or any other person who has the benefit of this Order in accordance with article 6;

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

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

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

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

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

(4) References in this Order to plots of land are to plots identified on the land plans and in the book of reference.

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

3. (1) Subject to the provisions of this Order, the undertaker is granted development consent for the authorised development to be carried out within the Order limits, and Schedule 1 (authorised development) has effect for that purpose.

(2) For the purposes of the authorised development, development consent granted by this Order shall include and permit the alteration, removal, clearance, refurbishment, reconstruction, decommissioning and demolition of any buildings or other structures within the Order limits to the extent that they relate to, are required by, or are incidental to the carrying out of the authorised development.

(3) The development authorised by this Order shall be constructed in the lines or situations shown on the land plans and works plans.

(4) The scheduled works shall be constructed within the limits of deviation.

(5) In constructing the scheduled works, the undertaker may—

(a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation; and

(b) deviate vertically to any extent downwards and (except in the case of maintaining) no more than 5 metres upwards from the heights specified in Part 2 of Schedule 1 for each building comprised in the authorised development and shown on the works plans as may be necessary, convenient or expedient.

(6) The main stack comprised in Work No. 1 and shown on the works plans shall not be constructed so as to be lower than 85 metres above ordnance datum and the flare stack comprised in Work No. 2b shall not be constructed so as to be lower than 140 metres above ordnance datum.

(7) The pipe conveyor comprised in Work No. 6b shall not be constructed above 21 metres above ordnance datum except in the locations shown on drawing 2.28 Conveyor Section in the works plans.

### **Maintenance, decommissioning and demolition of authorised development**

4. (1) The undertaker may at any time maintain the authorised development, except to the extent that the other provisions of this Order, the requirements or an agreement made under this Order provide otherwise.

(2) Subject to paragraph (3) and the requirements, the power to maintain the authorised development includes the power to carry out and maintain any of the following as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction or operation of the authorised development namely—

(a) works to alter the position of apparatus below ground level including main sewers drains and cables, including below ground structures associated with that apparatus within the Order limits; and

(b) works of decommissioning and demolition.

(3) This article only authorises the carrying out of maintenance, demolition and decommissioning of works within the Order limits.

### **Operation of generating station**

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

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

(3) Subject to the provisions of requirement 38 the generating station may be fired by natural gas or by solid fuels treated in the gasification facility comprised in Work No. 2a.

### **Benefit of the Order**

6. (1) Subject to paragraph (2) the provisions of articles 9 to 11, 14 to 27 and 31 shall have effect only for the named undertaker and a person who is a transferee or lessee as defined in this article.

(2) The named undertaker may, with the 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 and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (the “lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

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

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

### **Guarantees in respect of payment of compensation**

7. The authorised development must not be commenced and the undertaker must not begin to exercise the powers provided in articles 9 to 28, 31 and 32 of this Order unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order or an alternative form of security for that purpose is in place which has been approved by the relevant planning authority.

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

8. (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(10)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g), (ga) and (h) of section 79(1) of that Act, no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(11)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—

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<sup>(10)</sup> 1990 c.43. There are amendments to this Act which are not relevant to this Order.

<sup>(11)</sup> 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

- (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 in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement 20(1); or
- (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

### **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 2 (streets subject to street works) as is within the Order limits and may—

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

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

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) The provisions of this article shall not apply to the streets in parcel numbers 09/09, 09/10, 09/11, 10/14, 10/15, and 10/16 as shown on the land and works plans to the extent that any works interfere with the surface of the street in question or impede passage along the street but nothing in this article shall prevent the carrying out of works in the subsoil of a street to which this paragraph applies.

(5) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

### **Temporary stopping up of streets**

**10.** (1) Subject to sub-paragraph (5) the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the street specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) within the extent of the footpath diversion zone for that street shown on the land plans.

(4) The provisions of this article shall apply to any street that is created in or diverted through any parcels shown on the land plans and any such street may be temporarily stopped up, altered or diverted within the footpath diversion zone for such a street shown on the land plans.

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

- (a) the street specified as mentioned in paragraphs (3) and (4) without first consulting the local highway authority; and
- (b) any other street without the consent of the local highway authority which may attach reasonable conditions to any consent.

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

### **Access to works**

**11.** The undertaker may, for the purposes of carrying out the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the location specified by reference to access points marked on the land plans in columns (1) and (2) of Schedule 4 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Agreements with street authority**

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

- (a) any stopping up, alterations or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 9(1) (street works).

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

### **Crown rights**

**13.** (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 licensee—

- (a) 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)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

- (ii) belonging to Her 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
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government Department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority.
- (2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions.

### **Discharge of water**

**14.** (1) Subject to Part 2 of Schedule 8 (protective provisions), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent or approval as the case may be pursuant to paragraphs (3) and (4).

(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) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(12).

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

- (4) The undertaker shall not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker shall 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) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(13) (requirement for an environmental permit).

(8) In this article, any expressions, except those otherwise defined in this Order, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

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(12) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(13) S.I. 2010/675. Regulation 12 replaced section 85 of the Water Resources Act 1991 (c.56) which was repealed by Schedule 28 paragraph 1 to the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675).



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

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

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

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 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) shall, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

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

but such consent shall not be unreasonably withheld.

(5) The undertaker shall 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, Part 1 (determination of questions disputed compensation) of the 1961 Act.

### **Compulsory acquisition of land**

**16.** (1) Subject to paragraph (4) and article 25, the undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it.

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

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

(4) This article and articles 17 to 27 shall not apply to—

- (a) any land or interest in land owned by—
  - (i) the Simon Group Limited (company number 00052665) or its subsidiaries, including C.RO Ports Killingholme Limited, or to any mortgagee of such land in respect of an interest owned by the Simon Group Limited or any of its subsidiaries; and
  - (ii) Associated British Ports (company number ZC000195);

- (b) any of the following plots of land referred to on the land plan and in the book of reference: 03/01; 03/02, 03/03, 03/04, 03/05, 03/06, 03/07, 03/08, 03/09, 04/01, 04/02, 04/03, 04/04, 04/05, 04/06, 04/07, 04/08, 04/10, 05/01, 05/02, 05/03, 07/01, 07/02, 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04, and 09/05.

### **Power to override easements and other rights**

17. (1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker, by any person deriving title from it or by any of their servants or agents) can be undertaken notwithstanding that it involves—

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

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;
- (b) the erection, construction, or maintenance or anything in, on, over or under land; or
- (c) the use of any land,

which is authorised under any other provision of this Order, and done in accordance with its terms.

(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 include restrictions as to the user of land arising by the virtue of a contract having that effect).

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right shall be extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences but only to the extent required for or necessary or incidental to the authorised development.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge in pursuance of this article, compensation—

- (a) shall be payable under section 63 or 68 of the Lands Clauses Consolidation Act 1845 or under section 7 or 10 of the Compulsory Purchase Act 1965; and
- (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under those Acts; or
  - (ii) the injury arises from the execution of works on or use of land acquired under those Acts.

(6) Nothing in this article shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

(7) This article shall not apply in respect of any agreement, restriction, obligation or other provision contained in a deed made pursuant to section 106 of the 1990 Act, or section 278 of the 1980 Act.

### **Private rights of way**

18. (1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

whichever is the earlier, but only to the extent required for or necessary or incidental to the authorised development.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 27 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by the undertaker before—

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

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

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

(7) If any such agreement as is referred to in paragraph (6)(b)—

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

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

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

**19.** (1) After the end of the period of 5 years beginning on the day on which this Order comes into effect—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declarations shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(14) as applied by article 21 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

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(14) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

(2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**20.** (1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which a new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be 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 that new right.

(3) Subject to section 8 of the 1965 Act as substituted by article 23 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

**21.** (1) The Compulsory Purchase (Vesting Declarations) Act 1981 shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

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

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

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

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

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

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

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

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

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions).

### **Acquisition of subsoil only**

**22.** (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 16 (compulsory acquisition of land) 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 shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 23 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

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

**23.** (1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

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

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

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

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

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

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

the owner shall be required to sell the land subject to the notice to treat.

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

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

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

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

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

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

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

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

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

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

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

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

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

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

(3) Paragraph (2) shall 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, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

### **Temporary use of land for carrying out the authorised development**

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

- (a) enter on and take temporary possession of the plots of land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary or permanent works (including the provision of means of access) and buildings on that land.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the activities required to fulfil the purpose specified in column (3) of Schedule 5 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 20 of this Order (compulsory acquisition of rights).

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of 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 the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 Order the land referred to in paragraph (1) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 20 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 22 (acquisition of subsoil only).

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

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

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

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

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

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

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

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall 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 shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

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

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 shall not be required to acquire the land or any interest in it.

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

(11) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

### **Statutory undertakers**

27. Subject to article 16(4), the undertaker may—

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



### **Railway undertakings**

**28.** (1) Subject to the following provisions of this article, the undertaker may not under article 9 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway undertakers; or
- (b) forms part of a level crossing belonging to any such undertakers or to any other person, except with the consent of the undertakers or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld or delayed.

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

**29.** (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 shall prejudice the operation of any agreement to which this article applies.

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

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

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

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

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

**31.** (1) The undertaker may fell or lop any tree or shrub near any part of the authorised development or the Order land, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance

or operation of the authorised development or any apparatus used in connection with the authorised development.

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

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

### **Protective work to buildings**

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

(2) Protective works may be carried out—

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

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

(4) For the 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 which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 35 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and

- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development;

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

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

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

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

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

#### **Procedure in relation to certain approvals etc.**

**33.** (1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain (“discharging authority”) for any agreement or approval required or contemplated by any of the provisions of the Order such agreement or approval shall, if given, be given in writing and shall not be unreasonably withheld.

(2) Schedule 6 shall have effect in relation to all agreements or approvals granted, refused or withheld in relation to the requirements.

#### **Certification of plans, etc.**

**34.** (1) The undertaker shall, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference (Document Reference No 4.3, dated 10 February 2014) as amended in accordance with paragraph (2);
- (b) the land plans (Document Reference Nos 2.1 to 2.14, dated 20 March 2013);
- (c) the works plans (Document Reference Nos 2.15, Rev B to 2.27 Rev B, dated February 2014; and 2.28 dated 19 March 2013);
- (d) the Design and Access Statement (dated 22 March 2013);
- (e) the Architectural Study (dated January 2014);
- (f) the environmental statement (dated 22 March 2013), including the outline Construction Environmental Management Plan (Appendix 3.2 of the environmental statement);
- (g) the feasibility study (dated 22 March 2013) entitled C.GEN Killingholme Generating Station CCR Feasibility Study;
- (h) the Outline Coal Dust Management Plan (dated January 2014); and
- (i) the North Killingholme Power Project: Outline Operational Noise Compliance Methodology (January 2014),

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

(2) The book of reference shall be amended before its submission to the Secretary of State for certification to remove all references to—

- (a) the Environment Agency in respect of plots 06/04, 06/05, 06/06 and 06/07; and
- (b) North Lincolnshire Council in respect of plots 06/03, 06/04, and, 08/10.

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

(4) In this article, document reference numbers refer to the references given by the undertaker to documents it submitted to the Secretary of State.

### **Arbitration**

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

### **Deemed marine licence**

**36.** The undertaker is deemed to be granted a licence under section 66 of the Marine and Coastal Access Act 2009<sup>(15)</sup> to carry out the works described in Schedule 7, subject to the licence conditions set out in Part 3 of that Schedule.

### **Protection of interests**

**37.** Schedule 8 to this Order has effect.

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

11th September 2014

*Giles Scott*  
Head of Unit  
Department of Energy and Climate Change

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<sup>(15)</sup> 2009 c.23, as amended at the date of the coming into force of this Order.

## SCHEDULE 1

Article 3

### Authorised development

## PART 1

### Authorised development

#### **In North Lincolnshire**

A nationally significant infrastructure project comprising a generating station as defined in sections 14(1)(a) and 15 of the 2008 Act comprising—

*Work No. 1* — a combined cycle plant with a nominal gross electrical output of up to 470 MWe fuelled by gas and including—

- (a) one gas turbine within a turbine hall;
- (b) one steam turbine within a turbine hall;
- (c) one or two electricity generators and one or two transformers within a compound;
- (d) a heat recovery steam generator;
- (e) a main stack;
- (f) two banks of hybrid cooling towers, condenser equipment and auxiliary cooling equipment;
- (g) raw and fire water storage tanks;
- (h) a raw water treatment plant;
- (i) a demineralised water treatment facility;
- (j) gas insulated switchgear;
- (k) an administration building;
- (l) a workshop and warehouse building;
- (m) a materials storage facility;
- (n) a waste water treatment plant; and
- (o) a facility to enable steam-water pass-outs and/or hot-water pass-outs;

*Work No. 2a* — a gasification facility to enable the processing of solid fuels to produce syngas to supply to the gas turbine comprised in Work No. 1 including—

- (a) a gasifier;
- (b) a syngas treatment/conditioning facility;
- (c) acid gas removal equipment;
- (d) sulphur recovery and tailgas treatment equipment;
- (e) an electrical switching station;
- (f) an air separation unit;
- (g) nitrogen storage tanks;
- (h) oxygen storage tanks;
- (i) fuel milling/drying/preparation and supply equipment;
- (j) solid waste removal equipment and storage facilities;
- (k) a filter cake storage area; and

- (l) a biomass and/or limestone storage area;
- Work No. 2b* — a flare stack with flares integral to the operation of Work No. 2a;
- Work No. 2c* — a work comprising equipment to connect Work No. 2a and Work No. 2b;
- Work No. 3a* — a work comprising a piled platform and equipment for the intake of cooling water required for the operation of Work No. 1;
- Work No. 3b* — a work comprising pipes and associated infrastructure between Work No. 1 and Work No. 3a to transport cooling water to or from Work No. 1;
- Work No. 3c* — a work comprising pipes for the discharge of used cooling water from Work No. 1 transported by Work No. 3b;
- Work No. 4* — an access road running in a northerly direction from a junction with Haven Road to the southernmost point of Work No. 2a;
- Work No. 5* — a railway siding running from a connection to the existing Killingholme Branch Line and then running in a south-westerly direction before running anti-clockwise to termination at a location on the south western boundary of Work No. 1 and a facility for the unloading of trains delivering solid fuel;
- Work No. 6a* — facilities to enable the unloading of solid fuel from vessels moored at the existing wharf for transport to Work No. 7 by means of Work No. 6b;
- Work No. 6b* — a pipe conveyor to transport solid fuel from Work No. 6a to Work No. 7;
- Work No. 7* — a storage hall for the storage of solid fuel;
- Work No. 8* — a new access road commencing at a junction with Haven Road and running in an easterly direction to the southernmost point of Work No. 1;
- and in connection with such works and to the extent that they do not otherwise form part of any such work, associated development whether or not shown on the plans referred to in the requirements including—
- (a) the removal or modification of the northern drainage pond;
  - (b) habitat creation;
  - (c) water supply works, foul drainage provision, surface water management systems, and culverting;
  - (d) pipes for steam pass outs and/or hot water pass outs within the Order limits;
  - (e) internal site roads and vehicle parking facilities;
  - (f) bunds, embankments, swales, landscaping and boundary treatments and fencing;
  - (g) the demolition of buildings and structures within the Order limits;
  - (h) the provision of footways; and
  - (i) lighting columns and lighting.

## PART 2

### Building heights

<i>(1)</i> <i>Building</i>	<i>(2)</i> <i>Height (metres) above ordnance datum</i>
heat recovery steam generator	40
turbine hall	35

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

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<i>(1)</i> <i>Building</i>	<i>(2)</i> <i>Height (metres) above ordnance datum</i>
main stack	85
hybrid cooling tower (bank 1)	25
hybrid cooling tower (bank 2)	25
administration building	17
warehouse	25
water treatment plant	13
break tank	22
gas insulated switchgear building	17
covered fuel storage	40
biomass storage silos	50
limestone storage silos	50
gasifier, including fuel preparation facility	70
air separation unit	50
oxygen storage tank	25
nitrogen storage tank	25
acid gas removal	65
wastewater treatment plant	25
electrical switching station 1	25
electrical switching station 2	15
electrical switching station 3	15
flare stack	140

## PART 3

### Requirements

#### Interpretation

**1.** In this Part of this Schedule—

“Architectural Study” means the Architectural Study certified by the Secretary of State for the purposes of this Order;

“capture equipment” means the plant and equipment required to capture the target carbon dioxide and either—

- (a) identified as such in the current CCS proposal; or
- (b) installed on the designated site;

“CCS” means carbon capture and storage;

“CCS proposal” means a proposal for the capture, compression (should that be necessary) transport and storage of the target carbon dioxide, which identifies the proposed capture technology, compressor siting, transport route and storage location for the authorised development;

“CEMP” means the construction environmental management plan to be submitted and approved pursuant to requirement 15 below;

“current CCS proposal” means—

- (a) the CCS proposal including Work No. 2a and the other elements set out in the feasibility study certified by the Secretary of State for the purposes of this Order, and which has been assessed as technically feasible by the Secretary of State; or
- (b) where a revised CCS proposal has been identified under requirement 37(5), the proposal which has been most recently so identified;

“Design and Access Statement” means the document with that title certified by the Secretary of State for the purposes of this Order;

“designated site” means the land shown coloured buff on the works plans as the area where the undertaker proposes to locate capture equipment;

“operations area” means that part of the authorised development comprising parcel numbers 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03 shown on the land plans and described in the book of reference; and

“target carbon dioxide” means as much of the carbon dioxide emitted by the first 300 MWe of the capacity of the authorised development when it is operating at full capacity as it is reasonably practicable to capture for the purposes of permanent storage, having regard to the state of the art in carbon capture and storage technology for the time being.

#### **Time limits etc.**

2. The authorised development shall commence no later than the expiration of seven years beginning with the date that this Order comes into force.

#### **Development masterplan**

3. (1) No part of the authorised development shall be carried out until there has been submitted to and approved by the relevant planning authority—

- (a) where the authorised development is to be constructed in a single phase, a masterplan in respect of the entire authorised development; or
- (b) where the authorised development is to be constructed in two or more phases, a masterplan for the relevant phase of the authorised development.

(2) The masterplan shall include—

- (a) in relation to a development to be constructed in a single phase, a plan illustrating the entire authorised development; or
- (b) where the authorised development is to be constructed in two or more phases—
  - (i) those elements of the authorised development which are to be developed as part of that phase; and
  - (ii) where it is the plan for the first phase, any elements or areas of the authorised development which are intended to be constructed at a later date;
- (c) an outline programme setting out the anticipated programme for construction of those elements of the authorised development comprised in the relevant masterplan;



- (d) a scheme identifying how the elements of the authorised development to be constructed will be governed by the following—
    - (i) the CEMP;
    - (ii) a travel plan for construction workers and a travel plan for operational workers which has been submitted to and approved by the relevant planning authority;;
    - (iii) a management plan for construction traffic addressing construction traffic, HGV movements and abnormal loads which has been submitted to and approved by the relevant planning authority; and
    - (iv) a management plan for operational transport which has been submitted to and approved by the relevant planning authority; and
  - (e) where the relevant masterplan is submitted under paragraph (1)(b) for the first phase of the authorised development—
    - (i) a phased landscaping masterplan in respect of all phases of the authorised development; and
    - (ii) a landscaping management plan in respect of land required for future phases of the authorised development, to control the use and maintenance of undeveloped land together with a scheme of monitoring.
- (3) Where two or more masterplans are to be produced in accordance with paragraph (1)(b), the masterplan for each phase must demonstrate accordance with the principles previously established in the previous phase or phases.
- (4) Where a masterplan has been submitted to and approved by the relevant planning authority for a particular phase of the authorised development—
- (a) the details to be submitted to the relevant planning authority to discharge any requirement may relate to that phase only, in order that the construction and/or operation of that phase may commence in accordance with the approved details; and
  - (b) construction of that phase shall not commence until the relevant part of any requirement has been discharged in relation to that phase.
- (5) The authorised development shall be carried out in accordance with the relevant approved masterplan.

### **Detailed design**

- 4.** (1) No works within the relevant phase of the authorised development may commence until details of the following, which must accord with requirement 5, have been submitted and approved by the relevant planning authority—
- (a) details of the siting, design, external appearance and dimensions of Work Nos. 1, 2a, 2b, 3b, 3c, 4, 6a, 6b and 7 comprised in the authorised development;
  - (b) details of the colour, materials, and surface finishes of Work Nos. 1, 2a, 2b, 4, and 7 comprised in the authorised development;
  - (c) details of Work No. 4 and any other vehicular circulation roads, parking, and hard standings comprised in the authorised development; and
  - (d) details of finished ground levels and heights of all permanent buildings and structures comprised in the authorised development which in respect of critical infrastructure, shall not be below 5.2 metres above ordnance datum.
- (2) The authorised development shall be carried out and maintained in accordance with the approved details.

5. (1) The authorised development shall be carried out in accordance with the principles contained in the Architectural Study and the Design and Access Statement (with the former taking precedence in the case of conflict) and in general accordance with the building envelopes shown on the elevations contained in the works plans, (subject always to article 3(5) and (6), Part 2 of this Schedule and paragraph 5(2) of this Part).

(2) This requirement is subject to the approvals required under requirement 4.

#### **Site road**

6. The site access road comprised in Work No. 4 must be completed prior to commencement of construction of Work Nos. 1, 2a, 2b, 2c, 3a, 3b, 5, 6, and 7.

#### **Provision of landscaping**

7. (1) No part of the authorised development shall commence until a detailed landscaping scheme, associated working programme and long term management plan for the operations area which are consistent with the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The landscaping scheme shall include details of—

(a) the location, number, species, size and planting density of proposed planting, including details of—

- (i) structure planting to be undertaken on the perimeter of the site;
- (ii) screen planting to reduce views of ground level operational activities;
- (iii) enhancement planting alongside ditches and water bodies; and
- (iv) amenity planting at site entrances;

(b) how the landscaping works comply with the objectives set out in the South Humber Bank Landscape Strategy contained in SPG5 Landscape Character Assessment and Guidelines;

(c) the specific standard to which the works will be undertaken which shall include a requirement that fill be placed to a depth of not less than 600 mm in areas specified in the scheme; and

(d) a timetable for the implementation of all hard and soft landscaping works.

(3) All planting undertaken pursuant to the landscaping scheme shall comprise—

- (a) native species that would also enhance biodiversity and connect habitats; and
- (b) stock of local origin, where available.

(4) The authorised development shall not commence until the screen planting referred to at Requirement 7(2)(a)(ii) above has been undertaken.

#### **Implementation and maintenance of landscaping**

8. (1) All landscaping works shall be carried out in accordance with the detailed written landscaping scheme approved under requirement 7 and to the specified standard.

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

(3) If any boundary shrub or vegetation is the subject of localised clearance for the purpose of construction of the authorised development, replacement planting will be undertaken to replace the

extent of vegetation lost using locally occurring species to retain the existing vegetation pattern, unless otherwise approved by the relevant planning authority.

### **Highway works**

9. (1) No part of the authorised development shall be carried out until details of the siting, design and layout of the highway works comprised in Work Nos. 4 and 8 have after consultation with the relevant planning authority and highway authority been submitted to and approved by the relevant planning authority.

(2) The approved Works shall be carried out in accordance with the approved details.

### **Fencing and other means of site perimeter enclosure**

10. (1) No part of the authorised development shall be carried out until written details of all proposed permanent or temporary fences, hoardings, walls or other means of enclosure of the operations area has been submitted to and approved by the relevant planning authority.

(2) All construction sites shall remain securely fenced at all times during construction of the authorised development in accordance with the approved scheme.

(3) All temporary fencing shall be removed on completion of construction of the authorised development.

### **Construction surface water drainage**

11. (1) No part of the authorised development shall be carried out until a written scheme to deal with the disposal of surface and foul water drainage during construction (the “Construction Drainage Scheme”) has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency and North East Lindsey Drainage Board.

(2) The Construction Drainage Scheme shall provide for—

- (a) the treatment of contaminated surface water and installation of oil and grit interceptors through which surface water must pass;
- (b) measures for the control and treatment of leachate to prevent it from entering any watercourse, underground strata or adjoining land;
- (c) the continued operation of existing drainage systems during construction of the authorised development;
- (d) measures to ensure that no water runs off from stock piles into drainage ditches or watercourses;
- (e) the disposal of water used during dewatering activities;
- (f) use of temporary drainage routes and pumping equipment; and
- (g) a monitoring system for the purposes of monitoring the approved measures.

(3) Unless otherwise approved by the relevant planning authority, the scheme shall be implemented in accordance with the approved details and an approved programme.

### **Operational surface and foul water drainage**

12. (1) No part of the authorised development shall commence until a written scheme to deal with the details of the surface water drainage system, the oily water drainage system, the waste water treatment plant system and the sewage system (together the “operational drainage scheme”) has been submitted to and approved by the relevant planning authority.

(2) The operational drainage scheme shall provide for—

- (a) the specification for the waste water treatment plant comprised in the authorised development;
  - (b) surface water that has the potential for oil contamination to be passed through oil interceptors/filters prior to discharge;
  - (c) a method of disposal of waste water during washing of the compressors and heat recovery steam generator tubes;
  - (d) the optimisation of the use of biocides to ensure the least amount of such substances is required for the authorised development;
  - (e) a rain water harvesting system to be included in the authorised development;
  - (f) the discharge of all aqueous effluents via the drainage system comprised in the authorised development;
  - (g) the treatment of all pre-treated effluents from the gasification island by the waste water treatment plant comprised in the authorised development;
  - (h) a system to collect run-off from stock piles prior to discharge to the surface water drainage system; and
  - (i) a monitoring system for the purpose of monitoring the approved measures.
- (3) Unless otherwise agreed by the relevant planning authority, the scheme shall be implemented in accordance with the approved details prior to operation of the authorised development.

### **Contamination and groundwater**

**13.** (1) No part of the authorised development shall be carried out until details of a comprehensive contaminated land investigation has been submitted to and approved by the relevant planning authority and until the scope of works approved therein have been implemented.

(2) Unless otherwise approved by the relevant planning, the assessment shall include a site investigation to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters, including a risk assessment that—

- (a) adopts the Source-Pathway-Receptor principle and takes into account the sites existing status and proposed new use; and
- (b) where the risk assessment identifies any unacceptable risk or risks, provides a detailed remediation strategy to deal with land contamination or pollution of controlled waters affecting the site and two full copies of the site investigation and findings shall be forwarded to the relevant planning authority.

(3) Where paragraph (2)(b) applies, no works, other than investigative works, shall be carried out on the site prior to receipt of written approval of the remediation strategy by the relevant planning authority, and remediation of the site shall be carried out in accordance with the approved remediation strategy unless otherwise approved by the relevant planning authority.

(4) No occupation of any part of the authorised development shall take place until two copies of a verification report (“Verification Report”) demonstrating completion of works set out in the approved written scheme and the effectiveness of the remediation shall be submitted to and approved by the relevant planning authority.

(5) The Verification Report shall include—

- (a) results of sampling and monitoring carried out in accordance with the written scheme required under paragraph (1), to demonstrate that the site remediation criteria have been met;

- (b) a plan (a “Long-term Monitoring and Maintenance Plan”) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the Verification Report, which shall be implemented as approved.

(6) If during development, contamination not previously considered is identified then the relevant planning authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed with the relevant planning authority.

### **Archaeology**

14. (1) No part of the authorised development shall be carried out until a detailed and appropriate mitigation strategy, to ensure that all archaeological assets encountered before and during construction in the south western area of the operations area are adequately recorded, has been submitted to and approved by the relevant planning authority; the strategy shall include provision—

- (a) for further exploratory trenching if the relevant planning authority considers it necessary; and
- (b) for further remains discovered following approval of the strategy.

(2) The strategy must include provision for site investigation and post investigation assessment, to be completed in accordance with the details approved, and the results of those assessments shall be provided to the relevant planning authority for analysis, publication and archive deposition.

(3) Any analysis, reporting, publication or archiving required as part of the mitigation strategy in the written scheme for archaeological investigation shall be deposited with the North Lincolnshire Historic Environment Record, within a reasonable period to be agreed with the relevant planning authority.

### **CEMP**

15. (1) No part of the authorised development shall be carried out until a CEMP, substantially in accordance with the outline Construction Environmental Management Plan certified by the Secretary of State for the purposes of this Order, has been submitted to and approved by the relevant planning authority.

(2) All construction work shall be carried out in accordance with the approved CEMP unless otherwise approved by the relevant planning authority.

### **Storage of liquids on site**

16. (1) No part of the authorised development shall be brought into use until a written scheme to deal with handling and onsite storage of process chemicals, cleaning substances, fuels, and oils and lubricants on site has been submitted to and approved by the relevant planning authority.

(2) The scheme shall provide for—

- (a) the storage of any process chemicals, fuels (not being natural gas for combustion in Work No. 1 or syngas or solid fuels for combustion in Work No. 2a), oils or lubricants within an impermeable bund with a minimum capacity of 110% of the capacity of the relevant container or where the bund is for multiple containers a capacity of 110% of the largest container or 25% of all container capacities and the location of all taps, filler pipes, pumping equipment, vents and sight glasses will be located within the bund;
- (b) procedures for handling and storage of process chemicals, cleaning substances, fuels (not being natural gas for combustion in Work No. 1 or syngas or solid fuels for combustion in Work No. 2a), oils and liquids;

- (c) details of the alarms to be installed to any sumps that will be used in connection with storage areas, to alert in the case of any overflow of the storage areas; and
  - (d) the protocol to be followed in the event of a spillage of liquids to which this requirement applies.
- (3) Liquids shall be stored in accordance with the approved scheme.

### **Control of noise during construction**

**17.** During construction of the authorised development, the noise level as a result of the construction at any residential location shall not exceed 51dB LAeq, 1 hour unless otherwise approved by the relevant planning authority.

**18.** No part of the authorised development shall be carried out until a written scheme providing for the monitoring of noise generated during the construction of the authorised development has been submitted to and approved by the relevant planning authority; the scheme shall specify—

- (a) the locations at which noise will be monitored;
- (b) the method of noise measurement (which shall accord with BS 5228 or, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances); and
- (c) the frequency of submission of data to the relevant planning authority.

**19.** (1) Prior to commencement of construction Work No. 1 or Work No. 2a or Work No. 2b an acoustic design report must be submitted in relation to the construction of the relevant work and approved by the relevant planning authority.

(2) The report must detail—

- (a) the noise control measures that are proposed to be included in the design of the relevant Work;
- (b) the noise attenuation measures for the turbine and filter ventilation apertures and outlet ducts between the gas turbine and heat recovery steam generator;
- (c) acoustic attenuation measures for internal plant and equipment;
- (d) the control measures for noise of an impulsive or tonal nature; and
- (e) the enclosure of unit transformers and generator transformers.

(3) The measures must be installed in accordance with the approved scheme prior to commencement of operation of the relevant Work and retained and maintained afterwards in accordance with the manufacturers' specifications unless otherwise approved by the relevant planning authority.

### **Control of noise during operation**

**20.** (1) Operating of the authorised development shall not be commenced until a scheme has been submitted to the relevant planning authority and approved with the objective that the rating level, as defined in BS4142:1997, of noise emitted from the authorised development following commissioning shall not exceed the noise levels listed in the following table except in the case of an emergency, or unless otherwise approved by the relevant planning authority.

<i>Location</i>	<i>Daytime (07:00-23:00)</i> <i>dB<sub>L</sub>Aeq 1 hour</i>	<i>Night-time (23:00-07:00)</i> <i>dB<sub>L</sub>Aeq 5 minutes</i>
Any existing residential location	35	35

(2) Compliance with the above limits will be deemed to be achieved through compliance with the limits set out in the table which follows paragraph 1.2.1 of document the North Killingholme Power Project: Outline Operational Noise Compliance Methodology (January 2014) and a programme of Attended Noise Monitoring and periodic site noise audits and equipment condition reviews.

(3) The monitoring of noise pursuant to this requirement shall be compliant with the requirements of ISO 1996 Part 2 (2007).

**21.** (1) No part of the authorised development shall be brought into use until a written scheme providing for the monitoring of noise generated during the operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme shall provide for monitoring at the locations shown on Figure 4 of the North Killingholme Power Project: Outline Operational Noise Compliance Methodology (January 2014) and the method of noise measurement (which shall accord with BS 4142, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances). The scheme shall be implemented to establish baseline noise conditions.

(3) The scheme shall be subject to periodic reviews to establish the frequency of noise monitoring and the need for continued monitoring, and throughout the operational lifetime of the development the monitoring programme shall be reviewed—

- (a) following any change in plant, equipment or working practices likely to affect noise conditions, such change to be notified in writing to the relevant planning authority; or
- (b) following a written request by the relevant planning authority in relation to a noise related complaint, and

any such review shall be submitted to the relevant planning authority for its approval within 4 weeks of the notification or request.

**22.** In any case where the noise levels specified in requirement 20 or otherwise agreed by the relevant planning authority are exceeded because of an emergency, notification must be given to the relevant planning authority and local residents of the reasons for and anticipated duration of any such exceedences.

**23.** (1) Operation of the authorised development shall not be commenced until a scheme has been submitted to the relevant planning authority in consultation with Natural England and approved with the objective that the rating level, as defined in BS4142:1997, of noise from the authorised development following commissioning, recorded at the stated locations, shall not exceed the noise levels listed in the following table except in the case of an emergency, or unless otherwise approved by the relevant planning authority.

<i>Location</i>	<i>Rating Level <math>dB_{L_{Aeq}} 1 \text{ hour}</math></i>
NSR8	53
NSR9	47

(2) Compliance with the above limits shall be deemed to be achieved through compliance with a programme of attended noise monitoring and periodic site noise audits and equipment condition reviews via the written scheme to be agreed pursuant to requirement 21 above.

(3) The monitoring of noise pursuant to this requirement shall be compliant with the requirements of ISO 1996 Part 2 (2007).

### **Construction hours**

24. (1) Construction or demolition work shall not take place other than between 0700 and 1900 hours Monday to Saturday, and shall not take place at all on Sundays or public holidays, unless otherwise approved by the relevant planning authority or in case of emergency.

(2) If work is proposed outside of the construction work hours referred to in paragraph (1) then the undertaker will submit risk assessments and method statements to the relevant planning authority and will advise local residents by posting the information on its website.

### **Piling**

25. (1) No piling activities for the construction of the authorised development may commence until a piling method statement describing the measures to be taken to protect the North Killingholme Haven Pits Site of Special Scientific Interest and the Humber Estuary Special Protection Area which is consistent with the environmental statement has been submitted to and approved by the relevant planning authority.

(2) Piling shall be carried out in accordance with the approved method statement unless otherwise approved by the relevant planning authority.

### **Construction of Work Nos. 6a and 6b**

26. (1) No construction of Work Nos. 6a and 6b shall be carried out until a strategy to mitigate effects from construction of those works on the North Killingholme Haven Pits has been submitted to and approved by the relevant planning authority, in consultation with Natural England.

(2) The strategy shall include—

- (a) details of a construction programme to ensure that piling construction activities are carried out only from January to March in any calendar year;
- (b) details of the measures to be taken to screen construction activities from the North Killingholme Haven Pits, including—
  - (i) the construction of a hoarding along the southern boundary of the route of the construction works to reduce noise and visual disturbance to birds in the North Killingholme Haven Pits; and
  - (ii) where possible, the retention of the existing hedgerow located between the southern boundary of the order limits and the North Killingholme Haven Pits; and
- (c) details of directional construction lighting to minimise light spill to the North Killingholme Haven Pits.

(3) Construction of Work Nos. 6a and 6b shall be carried out in accordance with the approved strategy.

### **Combined heat and power**

27. A facility shall be provided and maintained within Work No. 1 to enable steam pass-outs and/or hot water pass-outs and reserve space for the provision of water pressurisation, heating and pumping systems for off-site users of process or space heating and its later connection to such systems.

28. (1) Prior to the operation of Work No. 1, a review of potential opportunities for the use of heat from the authorised development must be submitted to and approved by the relevant planning authority.



(2) The review shall provide for the on-going monitoring and full exploration of potential opportunities to use heat from the authorised development as part of a good quality CHP scheme in accordance with the principles set out in the CHPQA Standard Issue 3, and for the provision of subsequent reviews of such opportunities as necessary.

(3) Where viable opportunities for the use of heat are identified, a scheme for the provision of the necessary plant and pipework to the boundary of the site shall be submitted to and approved by the relevant planning authority; any plant and pipework installed up to the Order limits to enable the use of heat shall be installed in accordance with the agreed details.

(4) In this requirement, ‘CHPQA Standard Issue 3’ refers to the document of that name prepared by the Department for Environment, Food and Rural Affairs and published in January 2009, and the reference to a ‘good quality CHP scheme’ should be interpreted in accordance with that document.

### **Control of dust emissions during operation**

**29.** (1) No part of Work No. 2a, 2b, 2c, 5, 6a, 6b, or 7 shall be operated until a written scheme for the management and mitigation of dust emissions from solid fuels during operation of the authorised development substantially in accordance with the Outline Coal Dust Management Plan dated January 2014 has been submitted to and approved by the relevant planning authority (such approval not to be unreasonably withheld).

(2) The approved scheme shall provide for—

- (a) details of the plant comprised in Work No. 6a for the unloading of solid fuels from barges;
- (b) the detailed design of the pipe conveyor comprised in Work No. 6b;
- (c) measures to provide for the minimisation of dust emissions from railway wagons transporting solid fuel to the authorised development;
- (d) the detailed design of any facility comprised in Work No. 5 for the unloading of trains delivering solid fuels;
- (e) measures to control the management of emissions of dust from any of the activities to which sub-paragraphs (a)(d) relate; and
- (f) types of railway wagon which may be used for the delivery of solid fuel to the authorised development.

(3) Operation of the authorised development shall be carried out in accordance with the approved scheme.

### **Construction and security lighting scheme**

**30.** (1) No part of the authorised development shall be carried out until a detailed written construction and security lighting scheme which is consistent with the environmental statement has been prepared in consultation with an experienced bat worker and has been submitted to and approved by the relevant planning authority.

(2) The construction and security lighting scheme shall provide for—

- (a) the avoidance of indirect light spill to the north and west of the authorised development including the use of fencing to minimise light spill;
- (b) the minimisation of light spill, including the use of directional lighting and positioning of lights, baffles, cowls and hoods; and
- (c) measures to ensure that any such lighting will be directional and sensitive to the North Killingholme Haven Pits section of the Humber Estuary Special Protection Area and in relation to the bat mitigation strategy set out at requirement 32.

(3) Construction of the authorised development must be carried out in accordance with the approved scheme unless otherwise approved by the relevant planning authority.

### **Permanent lighting scheme**

**31.** (1) No part of the authorised development shall commence until a detailed written permanent lighting scheme which is consistent with the environmental statement has been prepared in consultation with an experienced bat worker and submitted to and approved by the relevant planning authority.

(2) The permanent lighting scheme shall provide for—

- (a) details of how the lighting design will reduce trespass, glare and spillage;
- (b) measures to ensure that the use of lighting will be restricted to the minimum periods required;
- (c) details of how, where possible, operational lighting will be designed to minimise impacts on relevant ecological receptors as described in the environmental statement; and
- (d) details of aviation warning lights for the flare tower.

(3) The scheme shall be implemented as approved, unless otherwise approved by the relevant planning authority.

### **Bat mitigation strategy**

**32.** (1) No part of the authorised development shall be carried out and, in particular, no demolition shall take place, until a written strategy for the mitigation of the impacts of the authorised development on bats, as outlined in the environmental statement, has been submitted to and approved by the relevant planning authority.

(2) The strategy shall provide for—

- (a) the details of a vegetative corridor of 20 metres width along the eastern and north-eastern edge of the operations area as shown in the figures forming part of the environmental statement, to provide a continuous corridor for bat commuting and foraging;
- (b) the details of the planting scheme along the corridor to include a range of species to increase invertebrate density and abundance, trees of appropriate species and height to be planted along the western edge of the corridor to provide a visual barrier to the operations area, and the interspersed scrub habitat within the corridor with trees and open grassland to avoid straight lines of vegetation;
- (c) the retention and enhancement of the wet drain along the south-western boundary of the site with planting including night scented, night flowering and nectar rich species;
- (d) the measures to be taken to minimise any gaps in the corridor on its route crossing the Killingholme Branch Line, Clough Lane and the route of the fuel conveyor;
- (e) measures to be incorporated into the construction and operational lighting schemes under requirements 30 and 31 to ensure that the corridor is minimised as a dark environment suitable for bats;
- (f) the retention and enhancement with planting of the existing vegetative strip along the western boundary of the operations area;
- (g) a programme for carrying out the details of the approved scheme; and
- (h) details of the management of the corridor for the construction period of the authorised development and the operation of the authorised development.

(3) No part of the authorised development shall be carried out until the approved bat mitigation strategy has been implemented and the construction and operation of the authorised development

shall not be carried out except in accordance with the approved strategy unless otherwise agreed by the relevant planning authority.

(4) No demolition work shall take place until a written strategy for surveys to adequately inform a decision as to whether a European Protected Species Licence is required, has been submitted to and approved by Natural England.

### **Water vole mitigation strategy**

**33.** (1) No part of the authorised development shall be carried out until a written strategy for the mitigation of the impacts of the authorised development on water voles, as outlined in the environmental statement, has been submitted to and approved by the relevant planning authority.

(2) The strategy shall provide for—

- (a) details of a programme to survey for the presence of water voles and the location of any water vole burrows in ditches 2B and 3B as shown in the figures forming part of the environmental statement;
- (b) the measures to be taken to address the protection of water voles where these are discovered in locations other than those assessed in the environmental statement including habitat manipulation and displacement methodologies;
- (c) the design and location of a box culvert to be installed beneath the southern access road comprised in Work No. 8;
- (d) the methodology for reporting the results of any surveys required under the scheme to the relevant planning authority, and the steps to be taken to obtain approval for measures to be taken to protect any water voles or water vole burrows that are discovered as part of those surveys;
- (e) enhancement planting to be carried out along ditch 3B, to include species that will not grow so as to over-shade and/or choke the ditch, and measures for a programme of scrub control to reduce shading of the ditch, and measures to ensure that water levels are maintained at an appropriate level for the maintenance of water vole habitat;
- (f) the creation of replacement habitat, which must wherever practicable be within the operations area, to include measures such as the extension of ditch 3B and the creation of additional wet ditches. New habitat will be designed so as to provide structurally suitable conditions for burrows, and appropriate food plants;
- (g) details of the management of any measures to be carried out as part of the water vole mitigation strategy, and

the construction of the authorised development shall not commence until the water vole surveys required under the strategy to be submitted under this paragraph have been carried out and the relevant planning authority has approved any measures to be taken to protect water voles as identified in the strategy.

(3) No construction works for the access road comprised in Work No. 8 shall be commenced until a box culvert is installed according to the specification agreed under the vole mitigation strategy.

(4) The approved water vole mitigation strategy and any measures thereunder shall be implemented and maintained during construction and operation of the development unless otherwise approved by the relevant planning authority.

### **Other ecological matters**

**34.** (1) No works shall be carried out to remove or modify the northern water body shown in the figures forming part of the environmental statement until details of measures to enhance the ecological value of the southern water body shown in those figures have been submitted to

and approved by the relevant planning authority and have been carried out in accordance with that approval.

(2) The measures shall include enhancement of riparian vegetation using appropriate native species, scrub clearance around the margins of the pond to reduce shading and encroachment, and the planting of areas of grassy bank and reeds to enhance habitat and species diversity.

**35.** (1) No part of the authorised development comprised in Works 2a or 5 shall be carried out until a strategy for the establishment of appropriate ecological mitigation in parcels 05/02 and 07/01 as shown on the land plans and described in the book of reference and measures for the relocation of species has been submitted to and approved by the relevant planning authority.

(2) The approved measures shall be implemented prior to construction of any part of the authorised development.

## CCS

**36.** Until the permanent cessation of commercial operation of the authorised development, the undertaker shall not, without the written consent of the Secretary of State—

- (a) dispose of any interest in land which includes the area to be occupied by Work Nos. 2a, 2b, and 2c except by way of a lease having a term of less than 2 years or which is otherwise determinable within 2 years by the undertaker for the purpose of installing the capture equipment; or
- (b) do any other thing, or allow any other thing to be done or to occur, which may reasonably be expected to diminish the ability, within the 2 years following such act or occurrence or thereafter, to install and operate the capture equipment on the designated site.

**37.** (1) The undertaker shall make a report (“monitoring report”) to the Secretary of State—

- (a) on or before the date three months from the date upon which electricity is first exported by the authorised development; and
- (b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.

(2) The monitoring report shall provide evidence that the undertaker has complied with requirement 36—

- (a) in the case of the first monitoring report, since this Order was made; and
- (b) in the case of any subsequent report, since the making of the previous monitoring report, and explain how the undertaker expects to continue to comply with requirement 36 over the ensuing two years.

(3) Each monitoring report shall state whether the undertaker considers that some or all of the technology referred to in the current CCS proposals from time to time will not work, and explain the reasons for any such conclusion.

(4) Each monitoring report shall identify any other impediment of which the undertaker is aware from time to time as a result of which it considers that any aspect of what is proposed in the current CCS proposals is likely or certain not to be technically feasible.

(5) Any monitoring reports which identify such an impediment shall state, with reasons, whether the undertaker considers it technically feasible to overcome the impediment by adopting revised or alternative CCS proposals, and, if so, shall include such proposals.

(6) Each monitoring report shall state, with reasons, whether the undertaker has decided to seek any additional consents, permissions, orders or licences, or to modify any existing consents, permissions, orders or licences, in respect of the current CCS proposals in the period referred to in paragraph (2) as appropriate.

(7) This requirement shall cease to have effect if the capture equipment is installed, or the authorised development ceases operation permanently or the requirement to submit such a report is removed from law and/or policy.

**38.** (1) The generating station comprised in Work No. 1 shall not operate using gas supplied by Work No. 2a unless—

- (a) the fuel used to supply the gas comprises biomass only; or
- (b) the Secretary of State has given in consent in writing to the plant being so operated and—
  - (i) capture equipment is installed on the designated site;
  - (ii) the Secretary of State has either—
    - (aa) provided pursuant to any enactment that some or all of the emissions from the authorised development are not to be treated as emissions from fossil fuel; or
    - (bb) otherwise issued a direction pursuant to any enactment that the emissions duty of the undertaker is modified or suspended; or
  - (iii) an exemption period under section 58 of the Energy Act 2013<sup>(16)</sup> is applicable to the CCS claim (or any part of it) serving the authorised development.

(2) Where the capture equipment referred to in this requirement comprises alternative technology to that comprised in Work No. 2a (such as post-combustion carbon capture) the generating station comprised in Work No. 1 shall not operate except where it is fuelled wholly or principally by natural gas.

(3) Work No. 2a shall not be operated as allowed by paragraph (1)(b)(i) unless—

- (a) the onshore and offshore pipelines, and other apparatus required to connect the authorised development to a site or sites for the storage of captured carbon have been constructed;
- (b) a licence for the use of the site or sites for the storage of captured carbon is in place; and
- (c) an environmental permit has been granted for the operation of the authorised development with gas supplied by Work No. 2a which incorporates conditions relating to the operation of the CCS chain,

provided that where and for so long as an environmental permit authorises operation without compliance with sub-paragraph (a) or (b), those sub-paragraphs shall not apply.

### **Fire water**

**39.** (1) No part of the authorised development shall be operated until scheme for the storage and handling of fire water has been submitted to and approved by the relevant planning authority.

(2) The scheme shall include details of—

- (a) the location and design of the dedicated fire water tank within the operations area; and
- (b) the kerb to be constructed around the operations area to retain spent fire water on-site prior to on-site treatment and/or removal.

(3) The approved scheme shall be implemented prior to operation of Work No. 1.

### **Drainage pond**

**40.** (1) No works shall be carried out to remove or modify the northernmost pond in the operations area until details of the works to be carried out and a method statement for the carrying out of such works, to be prepared in consultation with C.RO Ports Killingholme Limited, the Environment

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(16) 2013 c.32.

Agency and North East Lindsey Drainage Board, have been submitted to and approved by the relevant planning authority.

(2) The method statement shall detail protective works which will be carried out to ensure that no contaminants are mobilised by the works. The method statement shall also detail how the works will be carried out to ensure that there will be no detrimental effect on the performance of existing flood attenuation and thereafter once any modified pond is operational. The works shall be carried out in accordance with the approved details.

### **Site waste management plan**

**41.** (1) No part of the authorised development shall be constructed until a plan for the management and disposal of waste produced as a result of the construction of the authorised development has been submitted to and approved by the relevant planning authority. The construction of the authorised development shall be carried out in accordance with the approved details.

(2) No part of the authorised development shall be operated until a plan for the management and disposal of waste produced as a result of the operation of the authorised development has been submitted to and approved by the relevant planning authority. The authorised development shall be operated in accordance with the approved details.

### **Biomass fuel sustainability**

**42.** (1) Biomass fuel shall not be used in the gasifier comprised in the authorised development unless it complies with the applicable mandatory sustainability criteria.

(2) In this requirement—

“applicable mandatory sustainability criteria” means—

- (a) the mandatory sustainability criteria which the undertaker must comply with from time to time as a condition of eligibility of the authorised development for financial assistance under a relevant assistance regime; or
- (b) if financial assistance has been granted under a relevant assistance scheme in respect of the authorised development for a limited period of time and that period has elapsed so that the authorised development is no longer eligible for financial assistance under any relevant assistance regime, those criteria by compliance with which the operation of the authorised development was most recently eligible for such assistance,

and biomass fuel shall be taken to comply with the applicable mandatory sustainability criteria if, at that time, the undertaker has reason to believe that they comply with the applicable mandatory sustainability criteria;

“biomass fuel” means fuel, excluding material which is, or is derived directly or indirectly from animal matter, which qualifies as ‘biomass’ under—

- (a) article 4 of the Renewables Obligation Order 2009<sup>(17)</sup> (as amended from time to time by other subsequent legislation relevant to power generation);
- (b) such provisions of a relevant assistance regime incorporating applicable mandatory sustainability criteria as define biomass for the purposes of that regime from time to time;

“mandatory sustainability criteria” means criteria relating to the sustainability of biomass for energy use (other than biofuels and bioliquids) which are prescribed in a relevant assistance regime; and

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(17) S.I. 2009/785.

“relevant assistance regime” means the provisions of any legislation or other legally binding arrangements established or approved by Government under or by virtue of which the generation of electricity from biomass fuel on a commercial basis qualifies for financial assistance by reason of the burning of biomass fuel which comply with prescribed sustainability criteria.

### **Decommissioning**

**43.** (1) Within 12 months of the authorised development ceasing to be used for the purposes of generating electricity a site closure and restoration plan for the demolition and removal of the authorised development shall be submitted for approval by the relevant planning authority (such approval not to be unreasonably withheld).

(2) The scheme must include and be consistent with the principles set out in the environmental statement and also—

- (a) details of all structures and buildings to be demolished;
- (b) consideration of the effects of leaving below-ground structures permanently in situ together with details of consultations undertaken to consider the need to remove any or all such structures;
- (c) details of the means of removal of the materials resulting from decommissioning works and measures for the control of dust and noise;
- (d) phasing of the demolition and removal works;
- (e) details of the restoration works to restore the operations area to a condition agreed with the relevant planning authority;
- (f) details of the restoration works and their phasing;
- (g) details of the temporary lighting scheme (if any) proposed to be used during decommissioning works;
- (h) details of any remediation works required to remove contaminants from the operations area together with details of how such contaminants will be safely disposed of; and
- (i) details of how any mitigation measures to be implemented for the protection of ornithology and ecology during construction of the authorised development would be implemented during the decommissioning phase.

(3) The demolition and removal of the authorised development must be carried out fully in accordance with the approved scheme.

### **Requirements for written approval, etc.**

**44.** (1) Where under any of the above requirements the approval or agreement of the relevant planning authority or any other party is required, that approval or agreement must be provided in writing. Thereafter the matter approved shall be carried out in accordance with the approved or agreed details as they subsist from time to time.

(2) Where under any of the above requirements a written scheme is required it shall be accompanied by such illustrations as are necessary and appropriate in the circumstances.

### **Amendments to approved details**

**45.** With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority the approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

### **Flood warning and evacuation plan**

46. No part of the authorised development shall come into operation until details of a flood warning and evacuation plan has been submitted to and approved by the relevant planning authority. The authorised development shall only be occupied and operated in accordance with the approved flood warning and evacuation plan.

### **Aerodrome safeguarding**

47. No part of the authorised development shall commence until an Aerodrome Safeguarding Report (to include information required by the Defence Geographic Centre to chart the site for civil aviation purposes) has been submitted to and approved by the relevant planning authority and any mitigation measures for the protection of aviation interests identified in that report shall thereafter be implemented.

### **Train speed at North Killingholme Haven Pits**

48. (1) No solid fuel for the purposes of the authorised development shall be received by rail until a scheme comprising or governing the manner of operation of trains serving the authorised development which limits the speed of those trains upon that part of the Killingholme Branch Line adjacent to North Killingholme Haven Pits, as shown on drawing 64042B-DCO-48, to 10 km/h, or other noise attenuation measures, with at least the same sound attenuation, to address the effects of those trains upon the North Killingholme Haven Pits, has been submitted to and approved by the relevant planning authority in consultation with Natural England. The scheme approved under this requirement shall incorporate provisions for noise monitoring.

(2) The approved measures shall be implemented in relation to trains serving the authorised development.

(3) This requirement shall not apply where the Killingholme Loop, or a scheme having similar effect, has been constructed to provide a connection between the existing Killingholme Branch Line and the Barton-upon-Humber to Habrough railway line, which would allow or require higher speeds.

(4) The scheme approved under this requirement shall not fetter the powers of Network Rail with respect to operation of the railway in any way, nor impose any obligation upon Network Rail to impose or procure speed limits upon its railway network or request any other network and/or physical change.

### **Acoustic hoarding**

49. (1) No part of the authorised development shall be carried out until details of an acoustic hoarding on the northern and western boundaries of the operations area have been submitted to the relevant planning authority and approved.

(2) The acoustic hoarding shall be—

- (a) at least 5 metres in height; and
- (b) designed in consultation with an acoustics specialist to provide maximum noise attenuation for the benefit of avian receptors to the north and west of the operations area.

(3) The acoustic hoarding shall be erected and maintained during any works of construction for the authorised development.

### **Visual attenuation of train movements**

50. (1) Unless otherwise approved by the relevant planning authority in consultation with Natural England, no trains shall serve the authorised development until a scheme of planting, to be carried out adjacent to and both north and south of the Killingholme Branch Railway Line as it passes



North Killingholme Haven Pits as shown on drawing 64042B-DCO-48, has been submitted to and approved by the relevant planning authority in consultation with Natural England and Network Rail.

- (2) The approved scheme shall—
- (a) make provision for planting or other measures to close gaps in existing vegetation adjacent to the railway line;
  - (b) include details of the species and location of any proposed planting;
  - (c) provide for sufficient visual screening of train movements on the railway line from protected avian receptors at North Killingholme Haven Pits when fully grown;
  - (d) make provision for circumstances where planting is removed, dies or becomes seriously damaged or diseased after planting, or maintenance in the case of other measures adopted for this purpose;
  - (e) provide for use of native species of local origin to be used in planting where available and practicable; and
  - (f) set out when following planting solid fuel will be delivered by rail to the authorised development and such alternative measures as are necessary in the event that planting is not fully or sufficiently grown at such time as solid fuel deliveries are intended to commence by rail to the authorised development.

(3) The operation of the authorised development shall not be served by rail except where the approved scheme has been carried out or alternative measures authorised under one or both of paragraph (2)(a) and (2)(f) of this requirement are in place provided that where such measures include a permanent hoarding, or sufficient alternative, having the same visual attenuation effect, no planting scheme shall be required.

(4) This requirement shall not apply where the Killingholme Loop, or a scheme having similar effect, has been constructed to provide a connection between the existing Killingholme Branch Line and the Barton-upon-Humber to Habrough railway line.

### **Control of construction noise at North Killingholme Haven Pits**

**51.** (1) Construction of Work Nos. 6a and 6b adjacent to the North Killingholme Haven Pits, as shown on drawing 64042B-DCO-48, shall not take place except in accordance with a scheme that has been submitted to and approved by the relevant planning authority in consultation with Natural England in advance of such works.

(2) The approved scheme shall address the period outside the months January to March (January to March inclusive being the only months in which piling may occur) and shall have the objective that the rating level of construction noise from the construction of Work Nos. 6a and 6b adjacent to the North Killingholme Haven Pits shall not exceed both the LAeq rating level and the mean L<sub>Amax</sub> rating level as listed in the following table in any 12 hour period except in case of emergency or unless otherwise as approved by the relevant planning authority, in consultation with Natural England.

<i>Location</i>	<i>Rating dB, LAeq, 12 hour</i>	<i>Level</i>	<i>Rating dB, LAmax (mean)</i>	<i>Level</i>
NSR A, North of Haven Road	56		75	

(see Drawing Reference 64042B-Natural England-01)

(3) Compliance with the above limits shall be deemed to be achieved through compliance with a programme of attended noise monitoring and periodic site noise audits and equipment condition reviews pursuant to the approved scheme.

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

(4) The monitoring of noise pursuant to this requirement shall be compliant with the requirements of ISO 1996 Part 2 (2007).

(5) The mean LAmax will be calculated as the logarithmic average of LAmax values recorded at NSR A using a Class A integrating sound level meter, with a 15-minute sampling period, operating continuously throughout the entire construction day. In processing the recorded data to calculate the mean LAmax, the dataset over the course of the construction day could show “sampling periods of no construction activity”. These “sampling periods of no construction activity” will not be included in the mean LA max calculation.

**Changes approved by the relevant planning authority**

52. Where the words ‘unless otherwise approved by the relevant planning authority’ appear in these requirements, any such approval may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2

Article 9

Streets subject to street works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street work</i>
North Lincolnshire	Church Side
	College Road
	Jericho Lane
	Skitter Road/Station Road
	Clough Lane
	Chase Hill Road
	East Halton Road
	West Middle Mere Road
	Haven Road

SCHEDULE 3

Article 10

Street to be temporarily stopped up

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
North Lincolnshire District	FP50 as marked on the land plans	Within the footpath diversion zone

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

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

SCHEDULE 4

Article 11

Access to works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
North Lincolnshire District	Access No. A1 — Church Side
	Access No. A2 — College Road
	Access No. A3 — Jericho Lane
	Access No. A4 — Skitter Road
	Access No. A5 — Station Road

SCHEDULE 5

Article 25

Land of which temporary possession may be taken

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of plot shown on plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
North Lincolnshire	05/10, 06/03, 06/08, 06/09, 08/11	Provision of a working area, laydown area and construction site for the purposes of the authorised development.
	08/04	Provision of a working area and constructions site, and carrying out and maintaining ecological improvements and rights of access to establish and maintain the same.

SCHEDULE 6

Article 33

Procedure for discharge of requirements

**Interpretation of Schedule**

**1.** In this Schedule—

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

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(18); and

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

### **Applications made under requirement**

2. (1) Where an application has been made to a discharging authority for any agreement or approval required by a requirement the discharging authority shall give notice to the undertaker of their decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 3, 5 weeks from the day immediately following that on which the application is received by the authority;
- (b) where further information is requested under paragraph 3, 5 weeks from the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

### **Further information**

3. (1) In relation to any application to which this Schedule applies, the discharging authority shall have the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, it shall, within 7 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

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

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

### **Fees**

4. (1) Where an application is made to the discharging authority for agreement or approval in respect of a requirement, a fee of £97 shall be paid to that authority.

(2) Any fee paid under this Schedule shall be refunded to the undertaker within 8 weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph 2,

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(18) 1971 c.80.

unless within that period the undertaker agrees, in writing, that the fee shall be retained by the discharging authority and credited in respect of a future application.

## Appeals

5. (1) The undertaker may appeal in the event that—
  - (a) the discharging authority refuses an application for any agreement or approval required by a requirement or grants it subject to conditions;
  - (b) the relevant planning authority does not give notice of its decision to the undertaker within the decision period as determined in paragraph 2;
  - (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
  - (d) 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 is not necessary for consideration of the application.
- (2) The appeal process shall be as follows—
  - (a) the undertaker shall submit the appeal documentation to the Secretary of State, a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
  - (b) the undertaker shall on the same day provide copies of the appeal documentation to the discharging authority and the requirement consultee (if applicable);
  - (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State shall appoint a person within 10 business days of receiving the appeal documentation and shall forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
  - (d) the discharging authority and the requirement consultee (if applicable) shall submit written representations to the appointed person in respect of the appeal within 10 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and shall 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; and
  - (e) the appeal parties shall make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to paragraph (d) above.
- (3) The appointed person shall make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he shall, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.
- (4) Any further information required pursuant to sub-paragraph (3) shall be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information shall be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.
- (5) On an appeal under this paragraph, the appointed person may—
  - (a) allow or dismiss the appeal; or
  - (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

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

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

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

(8) The decision of the appointed person on an appeal shall 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.

(9) If an approval is given by the appointed person pursuant to this Schedule, it shall be deemed to be an approval for the purpose of Schedule 1 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) shall not be taken to affect or invalidate the effect of the appointed person's determination.

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

(11) 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 shall be made, the appointed person shall have regard to the National Planning Policy Framework guidance on planning appeals and the award of costs applicable at the time the appeal is submitted to the Secretary of State, or any circular or guidance which may from time to time replace it.

## SCHEDULE 7

Article 36

### Deemed marine licence

## PART 1

### Introductory

#### Interpretation

1. (1) In this licence—

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

“commence” means the first carrying out of any part of the licensed activities and commencement and commenced shall be defined accordingly;

“conditions” means conditions contained in this licence;

“the Health and Safety Executive” means the body established under section 10 of the Health and Safety at Work etc. Act 1974<sup>(19)</sup> or any successor to its statutory functions or other authority performing, carrying out or having the same regulatory functions as the HSE at the date of this licence;

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<sup>(19)</sup> 1974 c.37. Section 10 was substituted by articles 3 and 4 of S.I. 2008/960.

“licence holder” means the undertaker and any agent or contractor or sub-contractor acting on its behalf; “licensed activity” means any activity described in Part 2 of this licence; “MMO” means the Marine Management Organisation;

“the Order” means the North Killingholme (Generating Station) Order 2014;

“percussive piles” means driven piles but excludes the handling, placing and vibro-driving of piles;

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

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

### **Addresses**

2. (1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this licence is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH and where contact to the MMO District Office is required, the following contact details should be used: Estuary House, Wharncliffe Road, Grimsby, Lincolnshire, DN31 3QL, tel: 01472 355112, email: grimsby@marinemanagement.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is infrastructure@marinemanagement.org.uk.

## **PART 2**

### **Licensed activities**

3. (1) The undertaker (and any agent, contractor or subcontractor acting on their behalf) is authorised to carry out the activities licensable under section 66 of the 2009 Act, comprising the construction of works in or over the sea and/or on or under the sea bed specified in paragraph (2), together with the deposit of any substances and objects in or over the sea and/or on or under the sea bed in carrying out such construction works.

(2) Such activities are authorised in relation to—

- (a) works for the intake and discharge of cooling water in or over the sea and on or under the sea bed for the purposes of the construction and operation of Work No. 1: and
- (b) Work Nos. 3a, 3b, and 3c.

## **PART 3**

### **Conditions**

#### **General conditions**

4. (1) The conditions set out at paragraphs 4 to 24 are licence conditions attached to this deemed marine licence as granted by article 36.

(2) For such of the licensed activities that involve the construction, alteration or improvement of works in or over the sea or on or under the sea bed, the conditions shall apply to any person who for the time being owns, occupies or enjoys any use of any of those works.

(3) This licence expires after 10 years beginning on the date of coming into force of this Order.

**5.** The licence holder must ensure that the MMO District Marine Office is notified of the timetable of works and operations at least 10 days prior to the commencement of any licensed activity.

**6.** With respect to any conditions of this licence which require the licensed activities to be carried out in accordance with the plans and programmes or other documents approved by the MMO, the approval shall be taken to include any amendments to those documents that may subsequently be approved in writing by the MMO.

**7.** The MMO must be notified by the undertaker in writing of any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the undertaker at least four weeks before the commencement of the licensed activity.

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

**9.** Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity.

**10.** The works shall be carried out in accordance with a works schedule to be agreed in writing between the licence holder and the MMO prior to commencement of the works, and any changes to the works schedule are also to be agreed in writing with the MMO.

**11.** (1) Prior to any works commencing below the level of mean high water springs (meaning the average of high water heights occurring at the time of spring tides), the licence holder must submit detailed method statements to the MMO for approval for each stage of works at least 4 weeks prior to the commencement of works.

(2) All works must be undertaken in accordance with agreed and approved method statements.

**12.** The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with the Environment Agency's Pollution Prevention Control Guidelines.

**13.** (1) The licence holder must only work and access the works site within a defined and marked out area thereby limiting personnel and plant access to the site.

(2) Co-ordinates (in WGS84) and plan diagrams of the work area and access routes must be submitted to the MMO at least 4 weeks prior to the commencement of works.

(3) The written approval of the co-ordinates and plan diagrams by the MMO is required prior to works commencing.

**14.** The licence holder must ensure that during the works all wastes are stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

**15.** The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of completion of the works.

**16.** (1) The licence holder must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment.

(2) Concrete and cement mixing and washing areas should be contained and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of run off entering a watercourse.

**17.** The licence holder must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team: 08700 785 1050 (office



hours), 07770 977 825 (outside office hours) and dispersants@marinemanagement.org.uk or such replacement numbers or email address notified to the licence holder by the MMO in writing.

18. The licence holder must ensure that a Notice to Mariners is issued at least 10 days prior to works commencing warning of the start date for the construction of the works and updated as appropriate.

### **Cooling water intake conditions**

19. (1) No part of the licensed activities shall commence until, following consultation with the Environment Agency, full details of a scheme for minimising the impact of the cooling water intake system within the Humber Estuary on the aquatic environment have been submitted to and approved in writing by the MMO. The submitted scheme shall include—

- (a) details of the passive wedge wire cylinder to be installed over the entrance to the cooling water intake pipes to minimise effects on fish and eels;
- (b) details of how the water intake system will minimise the approach velocity of water to the screen or other equivalent system;
- (c) details of the concentration of biocides in the water intake system or other equivalent system and how they will be monitored and controlled;
- (d) proposals for implementing the scheme in advance of the commencement of commercial operations;
- (e) proposals for monitoring and reporting on the effectiveness of the scheme and, in the event that the scheme does not perform as predicted, a process for any necessary remedial action being approved by the MMO and thereafter implemented within a stated timescale following such approval,

and no part of the construction of the cooling water intake shall take place from the inter-tidal area.

(2) The undertaker shall implement the scheme as approved.

(3) The undertaker shall—

- (a) mark and light the licensed activities (including any temporary construction works comprised in the licensed activities) as required by Trinity House, as the MMO directs; and
- (b) at all times maintain any aids to navigation to the reasonable satisfaction of Trinity House.

### **Piling conditions**

20. (1) No operations consisting of piling shall commence until a piling method statement has been submitted to and agreed in writing by the MMO, following consultation with the Environment Agency and Natural England, such statement to include the following—

- (a) the use of pile pads and pile shrouds at all times;
- (b) a maximum pile diameter of 1 metre unless otherwise agreed in writing by the MMO, following consultation with Natural England and the Environment Agency;
- (c) a maximum number of 4 piles;
- (d) provision for soft start procedures to be followed, to include a requirement for a soft start of at least 180 seconds for percussive piling of any piles that will be in a free water condition during construction (marine piles); and
- (e) details of the anticipated spread of piling activity throughout a working day.

(2) Operations consisting of piling shall only be carried out in accordance with the relevant piling method statement.

(3) Where the words ‘unless otherwise agreed’ appear in sub-paragraph (1)(b), any such agreement or statement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of MMO that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

**21.** No percussive piling shall take place between 7 April and 1 June inclusive in any calendar year.

**22.** Where piling is required to be undertaken during March, September and October it shall be not be undertaken at low tide.

**23.** No percussive piling shall take place before 0600 hours or after 2200 hours on any day.

### **Detailed design**

**24.** (1) No works within the relevant phase of the authorised development may commence until details of the siting, design, external appearance and dimensions of Work No. 3a have been submitted to and approved in writing by the MMO.

(2) Work No. 3a shall be carried out in accordance with the approved details.

## SCHEDULE 8

Article 37

### Protective provisions

## PART 1

### For the protection of Anglian Water

#### **Application**

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

#### **Interpretation**

**2.** In this Part of this Schedule—

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

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

- (a) any drain or works vested in Anglian Water under the Water Industry Act 1991;
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act;
- (c) a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act); and

- (d) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;
- “functions” includes powers and duties;
- “in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and
- “plan” includes sections, drawings, specifications and method statements.

### **Apparatus within standard protection strips**

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

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

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

### **Alteration, extension, removal or relocation of apparatus**

**4.** The alteration, extension, removal or relocation of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such relocation are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

### **Contingency arrangements**

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

### **Creation of rights for Anglian Water**

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

### **Alternative means of access to apparatus**

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

### **Unmapped sewers, lateral drains or other apparatus**

8. If in consequence of the exercise of the powers conferred by this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will be given to Anglian Water as soon as reasonably practicable and, if identified by Anglian Water as being within its responsibility, thereupon afforded the same protection as other Anglian Water assets.

### **Damage or interruption caused by construction**

9. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 6 and 8 above, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker shall—

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

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

10. An amount which apart from this paragraph would be payable to Anglian Water in respect of works by virtue of paragraph 9 of this Part shall if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Anglian Water any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **PART 2**

### **For the protection of the Environment Agency**

1. (1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

“the Agency” means the Environment Agency;

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

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“emergency” means a situation which—

- (a) is unexpected, involving little or no prior warning, or aspects of which could not have reasonably been predicted in advance;
- (b) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (c) requires a need for urgent action to address the risk of harm, carry out repairs or prevent a worsening of the situation;

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

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to the fishery; or
- (d) affect the conservation, distribution or use of water resources; and

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

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

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 11.

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

- (a) shall not be unreasonably withheld or delayed;
- (b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been required by the Agency for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable modifications to the plans as the Agency may request and such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency shall use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. Without prejudice to the generality of paragraph 2 but subject always to the provision of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

by reason of any specified work.

4. (1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, shall be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

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

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

(3) If the Agency shall reasonably require, the undertaker shall construct all or part of the protective works so that they are in place prior to the construction of any specific work.

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

(5) Subject to sub-paragraph (6) and paragraph 8, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the undertaker.

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

5. (1) Subject to sub-paragraph (6) the undertaker shall, from the commencement of the construction of the specified works, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work

and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker shall cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall not, except in a case of emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so.

6. Subject to paragraph 8, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

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

(2) If by reason of—

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

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

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose, being not less than 28 days beginning with the date on which a notice of any damage or expected damage to a fishery is served under sub-paragraph (2) on the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the undertaker.

(4) Subject to paragraph 8, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**8.** The undertaker shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

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

**9.** (1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker shall indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

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

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

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

**11.** (1) The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent the Agency's access to and use of Haven Road.

(2) Where construction and operation of the authorised development reasonably requires interference with or obstruction of the free, uninterrupted and safe use of Haven Road or any traffic on Haven Road, a suitable alternative access shall be provided prior to and for the duration of any such interference.

## PART 3

### For the protection of Network Rail

**1.** The following provisions of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Network Rail and in the case of paragraph 10, any other person on whom rights or obligations are conferred by that paragraph.

**2.** In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;



“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993<sup>(20)</sup>;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006<sup>(21)</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station or depot lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held by or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

**3.** (1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval shall not be unreasonably withheld or delayed but may be subject to reasonable conditions (while recognising that the engineer has sole discretion in matters relating to safety) and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) Insofar as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised project pursuant to this Order.

**4.** (1) The undertaker shall not exercise the powers conferred by article 15 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act as it applies to this Order by virtue of the 2008 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) This Order shall not authorise the acquisition or extinguishment of any existing right of Network Rail except with the agreement of Network Rail which shall not be unreasonably withheld.

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<sup>(20)</sup> 1993 c.43.

<sup>(21)</sup> 2006 c.46.

5. (1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail but at the expense of the undertaker, or if Network Rail so agrees such protective works shall be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6. (1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any approval described in sub-paragraph (1)(a) but subject to sub-paragraph (3) below, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the act, neglect or default of Network Rail or its servants, contractors or agents; or

- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the act, neglect or default of the undertaker or its servants, contractors or agents.

**7.** The undertaker shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

**8.** Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**9.** (1) If any permanent or temporary alterations or additions to railway property, or any protective works under paragraph 5(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening of any part of the authorised project that includes a specified work, in direct consequence of the construction of that specified work—

- (a) such alterations and additions may be carried out by Network Rail; and
- (b) if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker shall pay to Network Rail all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires that part of the specified work to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sum referred to in this paragraph and paragraph 10(1)(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**10.** (1) The undertaker shall repay to Network Rail all fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Schedule;

- (c) in respect of the employment or procurement of the services of any inspectors and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work; and
- (e) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason.

**11.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**12.** Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing, maintaining or working railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, maintenance or working has been given to the undertaker, be repaid by the undertaker to Network Rail.

**13.** The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**14.** (1) The undertaker shall pay to Network Rail all costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably and properly incurred by Network Rail—

- (a) by reason of the construction, operation or maintenance of a specified work, or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker shall indemnify Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (unless attributable to an act, neglect or default on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that the relevant costs would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**15.** Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 14 and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

**16.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect agreements for the transfer to the undertaker of—

- (a) any railway property shown on the work and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or and lands, works or other property referred to in this paragraph.

**17.** Nothing in the Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993.

**18.** In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

**19.** The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 34 are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## PART 4

### For the protection of National Grid

#### Application

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

#### Interpretation

2. (1) In this Part of this Schedule—

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

“apparatus” means in respect of the various protected persons—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989<sup>(22)</sup>, belonging to or maintained by that protected person;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule any works whatsoever which are near to or may affect apparatus of the protected person shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services;

“functions” includes powers and duties;

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

“maintain” and “maintenance”, in relation to any apparatus or alternative apparatus of the protected person, shall include the ability and right to construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“protected person” means National Grid Electricity Transmission plc and National Grid Gas plc (together National Grid); and

“removed” in a context referring to the removal of apparatus includes the disconnection and abandonment of apparatus (because it is no longer in service and in respect of gas apparatus it has been emptied of any gas) where the retention of decommissioned apparatus would not affect the construction and use of the scheduled works, and where apparatus is so retained the nominated undertaker will take on all future liabilities arising in relation to that apparatus.

3. Except for paragraphs 4 (apparatus in stopped up streets), 9 (retained apparatus: protection: electricity undertakers), 11 (expenses) and 12 (indemnity), this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act (as if this Order did not apply).

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(22) 1989 c.29. Section 64 of that Act was amended by s.108 of, and Part II of Schedule 6 to, the Utilities Act 2000 (c.27). there are other amendments to the Act which are not relevant for the purposes of this Order.

### **Apparatus of protected persons in stopped up streets**

4. (1) Where any street is permanently stopped up under this Order, any protected person whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected person legal easements reasonably satisfactory to the specified protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (temporary stopping up of streets), or otherwise under this Order, a protected person shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

5. (1) The undertaker must exercise the powers conferred by this Order so as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers—

- (a) any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of any protected person or any interruption in the supply of electricity, gas or water, as the case may be, by the protected person, the undertaker shall bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and
- (b) subject to sub-paragraph (2), must—
  - (i) make compensation to the protected person for any loss sustained by it; and
  - (ii) indemnify the protected person against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that protected person, by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of a protected person or its contractors or workmen; and the protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

6. This Order shall not authorise the acquisition or extinguishment of land or rights in land owned by a protected person that is or are required for the retention or maintenance of any retained apparatus except with the agreement of the protected person which shall not be unreasonably withheld.

### **Removal of apparatus**

7. (1) If, in the exercise of agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this part of this Schedule and any right of a protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected person in question in accordance with sub-paragraph (2) to (6).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed, and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected person to their satisfaction (taking into account paragraph 8(1)) the necessary facilities and rights for—

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected person in question and the undertaker.

(5) The protected person in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) The provisions in this Schedule will prevail where there is any inconsistency or duplication between its provisions relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easements, rights, agreements, and licences granted, used, enjoyed, or exercised by the protected person as of right or otherwise in relation to the apparatus.

### **Facilities and rights for alternative apparatus**

**8.** (1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a protected person facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected person in question and shall be no less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless agreed by the protected person.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under paragraph 8(1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.



### **Retained apparatus: protection: electricity undertakers**

9. (1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise, the undertaker shall submit to the protected person in question a plan in accordance with the provisions of this paragraph.

(2) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

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

(3) The undertaker shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where any protected person requires any protective works to be carried out either by the protected person itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected person's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the protected person in question shall give 56 days' notice of such works from the date of approval of a plan submitted in line with sub-paragraph (1) or (5) (except in an emergency).

(8) If a protected person in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 7 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case shall the execution of any works commence until 56 days have elapsed following submission of any new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker shall comply with National Grid’s policies for development near overhead lines EN43-8 and the Health and Safety Executive’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

### **Retained apparatus: protection: gas undertakers**

**10.** (1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise, the undertaker shall submit to the protected person in question a plan in accordance with the provisions of this paragraph.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a material statement and describing—

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

(3) The undertaker shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where any protected person requires any protective works to be carried out either by the protected person itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected person’s satisfaction prior to the carrying out of any works authorised by this Order (or any relevant part thereof) and the protected person in

question shall give 56 days' notice of such works from the date of approval of a plan submitted in line with sub-paragraph (1) or (5) (except in an emergency).

(8) If a protected person in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 7 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case shall the execution of any works commence until 56 days have lapsed following submission of any new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

## **Expenses**

**11.** (1) Subject to the following provisions of this paragraph, the undertaker shall repay to a protected person on demand all charges, costs and expenses reasonably incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected person elects to use compulsory purchase powers to acquire any necessary rights under paragraph 7(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the protected person in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

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

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

## **Indemnity**

**12.** (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker or a protected person under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and
- (b) indemnify that protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any

requirement of a protected person or under its supervision shall not (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) or (2) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a protected person, its officers, servants, contractors or agents.

(4) A protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering its representations.

### **Ground subsidence monitoring scheme in respect of protected person's apparatus**

**13.** (1) No works within 100 metres of any other apparatus or alternative apparatus which are capable of interfering with or risking damage to a protected person's apparatus shall commence until a scheme for monitoring ground subsidence (referred to in this paragraph as "the monitoring scheme") has been submitted to and approved by the relevant protected person, such approval not to be unreasonably withheld or delayed.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) shall set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for the protected person's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub-paragraphs (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development. Any requirements of the protected person will be notified within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") shall be submitted to the protected person for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person save that the protected persons retains the right to carry out any further necessary protective works for the safeguarding of their apparatus and can recover any such costs in line with paragraph 11.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Part 3 of Schedule 1 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to the protected person for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

### **Enactments and agreements**

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

### **Co-operation**

15. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected person requires the removal of apparatus under paragraph 7(2) or a protected person makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of the protected person's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development, and the undertaker and each relevant protected person shall use their best endeavours to co-operate with each other for those purposes.

### **Access**

16. If in consequence of an agreement reached in accordance with paragraph 6 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

17. Save for differences or disputes arising under paragraph 7(2) or (4), 8(1), 9 and 10 any difference or dispute arising between the undertaker and a protected person under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 35 (arbitration).

## **PART 5**

### **For the protection of Centrica plc**

### **Application**

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

### **Interpretation**

2. In this Part of this Schedule—

“apparatus” means Centrica's pipeline or other electrical, gas or telecommunication infrastructure;

“Centrica” means Centrica plc and all of its subsidiaries and group companies including but not limited to Centrica KPS Limited, Centrica Storage Limited and Centrica Energy; and

“pipeline” means Centrica's condensate pipeline shown magenta on the plan bearing reference LRS/PB/KPS/02 and dated October 2013.

### **Creation of rights for Centrica**

3. Before extinguishing any existing rights for Centrica to keep, inspect, renew and maintain its apparatus on, over or in the Order land or to cross the Order land to access its apparatus, the undertaker, with the agreement of Centrica, shall create a new right, which is consistent with the existing right being extinguished to keep, inspect, renew and maintain the apparatus in the same location or a new right of access that is reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed.

### **Apparatus**

4. (1) Save where paragraph 5 of this Part applies, no works are to commence within 10 metres of apparatus until a construction method statement to protect the apparatus has been prepared by the undertaker and submitted to and agreed with Centrica which shall not be unreasonably withheld or delayed but may be given subject to conditions.

(2) The construction method statement must include provisions in respect of—

- (a) the location and methods of reinforcement of crossing points over the apparatus and restrictions on building and altering the ground level over the apparatus elsewhere;
- (b) a mechanism for the enforcement of the undertaker's use of designated crossing points over the apparatus and the agreed reinforcement methods; and
- (c) adoption of a prior notification and consent regime which would require the undertaker to—
  - (i) seek Centrica's consent to the carrying out of the proposed development within the vicinity of the apparatus, such consent not to be unreasonably withheld; and
  - (ii) notify Centrica of its intention to carry out any development within the vicinity of the apparatus, such notification to be provided at least 48 hours prior to any such development occurring; and

the authorised development must be carried out in accordance with the approved construction method statement.

### **Removal of apparatus**

5. (1) If, the undertaker acquires or overrides any interest in any land in which apparatus is laid, the apparatus shall not be removed under this Part of this Schedule and any right of Centrica to maintain the apparatus in that land shall not be extinguished until alternative apparatus has been constructed at the undertaker's expense, and is in operation to the reasonable satisfaction of Centrica in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of apparatus in that land, it shall give to Centrica 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Centrica reasonably needs to remove the apparatus) the undertaker shall, subject to sub-paragraph (3), afford to Centrica to their satisfaction (taking into account paragraph 6(1) below) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker or Centrica, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of

such apparatus is to be constructed, Centrica shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Centrica to seek compulsory purchase powers to this end unless it elects to so do.

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

(5) Centrica shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to Centrica of any such facilities and rights as are referred to in subparagraph (2) or (3), proceed without unnecessary delay, at the cost of the undertaker, to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) If works pursuant to subparagraph (1) include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Centrica any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, such sum shall be paid to the undertaker by the amount which represents that benefit.

#### **Facilities and rights for alternative apparatus**

6. (1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Centrica facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for the apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and Centrica and shall be no less favourable on the whole to Centrica than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by Centrica.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Centrica under (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Centrica than the facilities and rights enjoyed by it in respect of the pipeline to be removed and the terms and conditions to which those facilities and rights are subject, the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to Centrica as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Costs**

7. If for any reason or in consequence of the construction or operation of the authorised development, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Centrica, the undertaker must bear and pay the cost reasonably incurred by Centrica in making good any damage by reason or in consequence of any such damage.

#### **Access to power station**

8. The undertaker shall exercise the powers conferred by this Order so as not to obstruct or render less convenient the access of Centrica to its Killingholme Power Station and any apparatus, and not less than 56 days prior to undertaking any works to Chase Hill Road, East Halton Road or Station Road (including traffic management measures, diversions, road closures and stopping up) will submit to Centrica details of the proposed location and duration of those works and comply with its reasonable requirements for ensuring its free and unrestricted use of those highways.



### **Requirement for agreement**

9. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or override any easement or other interest of Centrica, acquire any land or other interest of Centrica or create any new rights over the same otherwise than by agreement of Centrica, which shall not be unreasonably withheld.

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### **EXPLANATORY NOTE**

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

This Order grants development consent for, and authorises C.GEN Killingholme Limited to construct, operate and maintain, an electricity generating station at North Killingholme, North Lincolnshire together with all associated development. For the purposes of the development that it authorises, C.GEN Killingholme Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land and to use land, as well as to override easements and other rights. The Order also authorises the making of alterations to the highway network, provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also deems to be granted a marine licence for marine licensable activities, being the deposit of substances and articles and the carrying out of works involved in the construction of the generating station and associated development. The deemed marine licence imposes conditions in connection with the deposits and works for which it grants consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 34 (certification of plans, etc.) of this Order may be inspected free of charge at the offices of North Lincolnshire Council at North Lincolnshire Council, Civic Centre, Ashby Road, Scunthorpe, DN16 1AB.