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STATUTORY INSTRUMENTS

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**2017 No. 433**

**INFRASTRUCTURE PLANNING**

**The Keuper Underground Gas Storage Facility Order 2017**

*Made* - - - - *15th March 2017*

*Coming into force* - - *5th April 2017*

An application under section 37 of the Planning Act 2008(1) has been made to the Secretary of State for an order granting development consent.

The application was examined by the Examining Authority which has made a report to the Secretary of State under section 83(1)(b) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(2) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

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

The Secretary of State, in exercise of the powers conferred by sections 114 and 120 of the 2008 Act, makes the following Order:

**PART 1**

**PRELIMINARY**

**Citation and Commencement**

**1.** This Order may be cited as the Keuper Underground Gas Storage Facility Order 2017 and comes into force on the 5th April 2017.

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(1) [2008 c.29](#); the relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and schedule 13 to, the Localism Act [2011 \(c. 20\)](#) and by sections 22-27 of the Growth and Infrastructure Act [2013 \(c. 27\)](#). Transitional provisions are contained in [S.I. 2013/1124](#).

(2) [S.I. 2009/2263](#), amended by [S.I. 2012/635](#) and [2012/787](#).

## Interpretation

2.—(1) Except where contrary provision is made in Schedule 9 (protective provisions), in this Order—

“the 1961 Act” means the Land Compensation Act 1961(3);

“the 1965 Act” means the Compulsory Purchase Act 1965(4);

“the 1980 Act” means the Highways Act 1980(5);

“the 1990 Act” means the Town and Country Planning Act 1990(6);

“the 1991 Act” means the New Roads and Street Works Act 1991(7);

“the 2008 Act” means the Planning Act 2008(8);

“authorised development” means the nationally significant infrastructure project and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning set out in section 32 of the 2008 Act, and any works carried out pursuant to the requirements;

“the book of reference” means the book of reference revision and the book of reference and land plans clarifications and errata certified by the Secretary of State for the purposes of this Order;

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

“Canal & River Trust” means the Canal & River Trust whose address is Navigation Road, Northwich, Cheshire CW8 1BH;

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

“CEMP” means the construction environmental management plan to be submitted and approved pursuant to requirement 3 of Schedule 2;

“Cheshire West and Chester Borough Council” means the Cheshire West and Chester Borough Council whose address is HQ, Nicolas Street, Chester, CH1 2NP;

“commence” means the carrying out of a material operation, as defined in section 155 of the 2008 Act, comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” are to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act(9);

“draft CEMP” means the document certified as the draft CEMP by the Secretary of State for the purposes of this Order;

“environmental statement” means the documents certified as the environmental statement and the environmental statement clarifications and errata by the Secretary of State for the purposes of this Order;

“gas” has the same meaning as natural gas in section 235 (interpretation) of the 2008 Act;

“Halton Borough Council” means the Halton Borough Council whose address is Municipal Buildings, Kingsway, Widnes, WA8 7QF;

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(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 1980 c. 66.

(6) 1990 c. 8.

(7) 1991 c.22.

(8) 2008 c.29; the relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and schedule 13 to, the Localism Act 2011 (c. 20) and by sections 22-27 of the Growth and Infrastructure Act 2013 (c. 27). Transitional provisions are contained in S.I. 2013/1124.

(9) 2008 c.29; section 134 of the Planning Act 2008 has been amended by the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 (S.I. 2017/16).

- “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of the Order;
- “the landscaping plans” means the plans certified as the landscaping plans by the Secretary of State for the purposes of the Order;
- “local highway authority” has the same meaning as in section 329(1) of the 1980 Act;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, or vary the authorised development as described in Schedule 1, and any derivative of “maintain” must be construed accordingly;
- “main river” has the meaning in section 113(1) Water Resources Act 1991<sup>(10)</sup>;
- “Manchester Ship Canal Company Ltd” means the Manchester Ship Canal Limited (Company registration number 07438096) whose registered address is Maritime Centre, Port of Liverpool, Liverpool, Merseyside L21 1LA;
- “National Grid Gas” means National Grid Gas plc (Company registration number 02006000) or any successor company performing the same functions;
- “Order land” means the land described as plots 1.01 to 5.01 in the book of reference as shown on the land plans;
- “Order limits” means the limits shown on the works plans within which the authorised development must be carried out;
- “owner” in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981<sup>(11)</sup>;
- “relevant planning authority” means Cheshire West and Chester Borough Council in relation to land within its administrative area and Halton Borough Council in relation to land within its administrative area and any successors to their functions as planning authority for the area in which the land to which the provisions of this Order apply, and “relevant planning authorities” means both of them severally;
- “requirements” means the requirements set out in Schedule 2 (requirements);
- “the routing plan” means the plan certified by the Secretary of State as the routing plan for the purposes of this Order;
- “the seismic survey report” means the document certified as the seismic survey report by the Secretary of State for the purposes of this Order;
- “statutory undertaker” means any person falling within section 127(8), of the 2008 Act and a public communications provider as defined in section 151(1) of the Communications Act 2003<sup>(12)</sup>;
- “the statutory undertakers’ apparatus plan” means the plan certified by the Secretary of State as the statutory undertakers’ apparatus plan for the purposes of this Order;
- “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” has the same meaning as in Part 3 of the 1991 Act;

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(10) 1991 c. 57; the definition of “main river” was amended by the Water Act 2014 (c. 21), s.59.

(11) 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).

(12) 2003 c. 21.

“street works and access plan” means the plan certified as the street works and access plan by the Secretary of State for the purposes of this Order;

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

“undertaker” subject to article 7, means Keuper Gas Storage Limited (company registration number 08850140) whose registered office is at Runcorn Site HQ, South Parade, PO Box 9, Runcorn, Cheshire, WA7 4JE;

“watercourse” 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) All distances, directions and lengths referred to in this Order and in any document referred to in this Order are approximate and distances between points on a work comprised in the authorised development must be taken to be measured along that work.

## PART 2

### PRINCIPAL POWERS

#### **Development consent for authorised development etc.**

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2, the undertaker is granted development consent for the authorised development, in Schedule 1, to be carried out within the Order limits.

(2) In constructing the authorised development, the undertaker may deviate laterally from the lines or situations shown on the works plans within the limits of the deviation relating to that work shown on those plans.

#### **Maintenance of authorised development**

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

#### **Authorisation of Use**

5.—(1) Subject to the provisions of this Order and to the requirements the undertaker may operate and use the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a permit or licence under any legislation that may be required from time to time to authorise the operation of an underground gas storage facility.

#### **Benefit of Order**

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

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

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

7.—(1) The 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 (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations (including development consent obligations within the meaning of section 106A of the 1990 Act) as would apply under this Order if those benefits or rights were exercised by the undertaker.

### **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>(13)</sup> (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order may 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 sites) or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>(14)</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—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority pursuant to requirement 5; 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 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

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<sup>(13)</sup> 1990 c. 43; section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), section 106 of and Schedule 17 to the Environment Act 1995 (c. 25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments to this section which are not relevant to this Order.

<sup>(14)</sup> 1974 c. 40; section 61 is amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

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

**9.**—(1) The undertaker must not begin to exercise the powers in articles 10 to 31 of this Order in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose which has been approved by the Secretary of State.

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

## **PART 3**

### **STREETS**

#### **Street works**

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as are 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;
- (e) execute any works to provide or improve sight lines required by the highway authority; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d) and (e);

(2) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority but such consent must not be unreasonably withheld.

(3) 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.

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

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

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

**11.**—(1) The undertaker may for the purposes of carrying out the authorised development within the Order limits alter the layout of or carry out works in the street specified in column (2) of Schedule 4 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) and subject to paragraph (3), the undertaker may for the purposes of carrying out or maintenance of the authorised development alter the layout of any street within the Order limits and the layout of any street having a junction with such a street and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of the kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (c) reduce the width of the carriageway of the street.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority but such consent must not be unreasonably withheld.

(4) Where it seeks the consent of the street authority under sub-paragraph (3) the undertaker must provide to the street authority such details of the proposed works as the street authority may reasonably require.

(5) The alteration of any street pursuant to this article must be completed to the reasonable satisfaction of the street authority.

### **Maintenance of altered streets**

**12.**—(1) Where a street is altered or diverted under this Order, the altered or diverted part of the street, unless otherwise agreed with the street authority, will be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

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

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

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

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

### **Temporary prohibition or restriction of use of streets**

**13.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict any street or any other right of way and may for any reasonable time—

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

(2) Without prejudice to paragraph (1), the undertaker may temporarily alter or divert the streets specified in columns (1) and (2) of Schedule 5 (streets and rights of way to be temporarily stopped up) to the extent specified, by reference to the numbers shown on the street works and access plan, and in column (3) of that Schedule.

(3) The undertaker must 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.

(4) The undertaker must restore to the reasonable satisfaction of the street authority any street that has been temporarily stopped up, altered or diverted under this article.

(5) The undertaker may not temporarily prohibit the use of, alter or divert—

- (a) any street or right of way specified in paragraph (2) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) The undertaker, during and for the purposes of carrying out the authorised development, may for any reasonable time temporarily prohibit the use of, alter or divert the section of the public right of way (being a restricted byway) shown between points 1 and 2 on the street works and access plan and specified in Schedule 5 (streets and rights of way to be temporarily stopped up).

(7) Without prejudice to paragraph (6), the undertaker may not temporarily alter or divert a public right of way without first consulting the local highway authority, whose consent may be subject to conditions and must not be unreasonably withheld.

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

#### **Access to works**

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

- (a) Form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 6 (access to works); and
- (b) With the approval of the relevant planning authority, after consultation with the highway authority, 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 authorities**

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

- (a) the construction of any new street authorised by this Order;
- (b) any stopping up, alteration or diversion of a street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article 10(1) (street works).

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

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



## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(15)</sup> (right to communicate with public sewers).

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

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

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

(7) This article does not authorise the discharge or entry into inland fresh waters or coastal waters of any matter whose entry or discharge into these waters is prohibited by regulation 38 (offences) of the Environmental Permitting (England and Wales) Regulations 2010<sup>(16)</sup>.

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency or a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(17)</sup> (interpretation), an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(18)</sup> have the same meaning as in that Act.

#### Protective work to buildings

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

(2) Protective works may be carried out—

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<sup>(15)</sup> 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.

<sup>(16)</sup> S.I. 2010/675.

<sup>(17)</sup> 1964 c. 40; there are amendments to section 57 that are not relevant to this Order.

<sup>(18)</sup> 1991 c. 57.

- (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 completion of that part of the authorised development in the vicinity of the building at any time up to the decommissioning of the authorised development under paragraph 18 (decommissioning) of Schedule 2.

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

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

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

(5) Before exercising–

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

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the 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 40 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which the 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 must compensate the owners and occupiers of the building for any loss or damage sustained by them.

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

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

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

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

- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

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

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

- (a) survey and/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/or subsoil and/or to remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a) carry out ecological and 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/or investigation of land and/or the 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 written notice has been served on every owner and occupier of the land.

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

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

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

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

but such consent must not be unreasonably withheld

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

#### **Temporary closure of, and works in and over, the canal**

**19.**—(1) The undertaker may, subject to Part 3 of Schedule 9 (protective provisions), for the purposes of the carrying out and maintenance of the authorised development temporarily close, prohibit the use of or restrict the use of, the part of the canal specified in columns (1) and (2) of Schedule 7 (temporary closure and works in the canal) for the purposes specified in column (3).

(2) Without prejudice to paragraph (1) but subject to paragraphs (3), (4) and (5) the undertaker may in connection with the carrying out or maintenance of the authorised development—

- (a) temporarily close part of the canal and carry out works at any point within that relevant part of the canal as the undertaker considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the relevant part of the canal and may load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials;

- (c) temporarily suspend any right to moor in such manner and to such extent as may appear to the undertaker to be necessary or convenient; and
  - (d) on grounds of health and safety only, temporarily close to navigation the relevant part of the canal.
- (3) During the period of any closure referred to in paragraph (2) all rights of navigation and other rights relating to and any obligations of the Canal & River Trust to manage the relevant part of the canal so closed are to be suspended and unenforceable against the Canal & River Trust.
- (4) The power conferred by paragraph (1) must be exercised in such a way which secures—
- (a) that no more of the relevant part of the canal is closed to navigation at any time than is necessary in the circumstances; and
  - (b) that, if complete closure to navigation of the relevant part of the canal becomes necessary all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.
- (5) In exercising the powers conferred by paragraph (1) in relation to the relevant part of the canal the undertaker must—
- (a) take such reasonable steps as are necessary to ensure that the functioning of any intake or discharge along the canal is unaffected;
  - (b) keep any interference with water levels or flow to a minimum reasonably necessary to carry out the authorised development;
  - (c) take such reasonable steps as are necessary to ensure that persons in control of barges or other vessels or craft in the canal are made aware of any temporary closure, prohibition or restriction of use; and
  - (d) provide such emergency assistance as may reasonably be requested by persons in control of barges or other vessels or craft in the canal following an accident or mechanical failure, for the safety of persons on board and/or the recovery of the barge, vessel or craft to a location where it can be safely be moored and accessed.
- (6) Any person who suffers loss or damage as a result of—
- (a) the suspension of any private right of navigation or the suspension of any private right to use the towpath under this article; or
  - (b) any effect of the exercise of the powers conferred by paragraph (1) on the functioning of any intake or discharge along the canal,

is to be entitled to be paid compensation for such loss and damage by the undertaker to be determined, in the case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

## PART 5

### POWERS OF ACQUISITION

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

**20.**—(1) The undertaker may acquire compulsorily so much of the land described in the book of reference and shown on the land plans as is required for the authorised development or to facilitate it, or is incidental to it.

(2) This article is subject to article 23 (acquisition of subsoil only) and article 27 (temporary use of land carrying out the authorised development).

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

21.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act (which makes provision for compulsory acquisition under the Acquisition of Land Act 1981); and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(19) as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of this Order.

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph will 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**

22.—(1) The undertaker may 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 the Order land, or any part of it, is vested in the undertaker, whichever is the later, the land over which any new rights is acquired will 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 24 (acquisition of part of certain properties) of this Order, where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not 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 is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Acquisition of subsoil only**

23.—(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 20 (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 may not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 24 (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**

24.—(1) This article applies 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 is to 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 is to be required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal 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 must 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 is 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 is to 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 is to 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 addition 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 is to 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, pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

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

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

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

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

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

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

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

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

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

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

**26.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(20) applies as if this Order were a compulsory purchase order.

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

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

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

(4) 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)” is omitted.

(5) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations Act) 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

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(20) 1981 c. 66; sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by section 56 and 321 of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50). Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and paragraph 7(2) of Schedule 19 to the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 2 of Schedule 3 was repealed under paragraph 40(4) of Schedule 10 to the Finance Act 1975 (c. 7) and Schedule 9 to the Capital Transfer Tax Act 1984 (c. 61). There are other amendments to this Act which are not relevant to this Order.

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

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary 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 must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land of which temporary possession has been taken under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 8 (land of which temporary possession may be taken) unless and to the extent that it is authorised to do so by the acquisition of rights over land or creation of new rights over land pursuant to article 21 (compulsory acquisition of rights) of this Order.

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

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

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

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

- (a) acquiring new rights over any part of that land under article 22 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 23 (acquisition of subsoil only).

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

(10) Section 13 of the 1965 Act<sup>(21)</sup> (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

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(21) Section 13 is amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).



(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

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

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

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; 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) does not authorise the undertaker to take temporary possession of—

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

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

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

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

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

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

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 50 years beginning with the date on which that part of the authorised development is first opened for the use of the underground gas storage.

### **Statutory undertakers**

**29.** The undertaker may, subject to Schedule 9 (protective provisions) within the Order limits—

- (a) extinguish the rights of statutory undertakers shown on the land plans and described in the book of reference; and

- (b) replace, reposition, renew, alter and supplement the apparatus belonging to statutory undertakers as shown on the statutory undertakers' apparatus plan.

### Private rights

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

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or  
 (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act<sup>(22)</sup> (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the Order land, is required for the purposes of this Order will 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 will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

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

(6) Paragraphs (1) to (3) are to 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 do 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 will be effective in respect of the persons so deriving title, whether the title was derived before or after making the agreement.

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<sup>(22)</sup> Section 11 is amended by section 34 of, and Schedule 4 to the Acquisition of Land Act 1981 (c. 67), section 3 of Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c. 71) and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order (S.I. 2009/1307).

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

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

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

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

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

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

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

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

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

**32.** Development consent granted by this Order is to 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 not being operational land).

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

**33.**—(1) Save for trees planted in accordance with requirement 6 in Schedule 2 (requirements), the undertaker may, pursuant to the requirements in Schedule 2, fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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

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

### Protective provisions

34. Schedule 9 (protective provisions) to this Order has effect.

### Certification of plans etc.

35.—(1) The undertaker must, as soon as reasonably practicable after the making of the Order, submit to the Secretary of State copies of—

- (a) the book of reference (document ref: 4.3);
- (b) the book of reference and land plans clarifications and errata (document ref:10.14);
- (c) the Order limits drawing nos: 13-03-01/HOL/24/100-107/B1;
- (d) the land plans drawing nos: 13-03-01/HOL/24/610-617/B1;
- (e) the works plans drawing nos: 13-03-01/HOL/24/500-506/B1, 13-03-01/HOL/24/509/B1, 13-03-01/HOL/24/510/B2, 13-03-01/HOL/24/511/B1, 13-03-01/HOL/24/512/B2 and 13-03-01/HOL/24/513-514/B1;
- (f) the street works and access plan drawing no.:13-03-01/HOL/24/413/B1;
- (g) the environmental statement (document refs: 6.1-6.3);
- (h) the environmental statement clarifications and errata (document ref: 10.13);
- (i) the elevation drawing nos::
  - (i) 13-03-01/HOL/24/236/B1;
  - (ii) 13-03-01/HOL/24/270/B4, 13-03-01/HOL/24/271/B2, 13-03-01/HOL/24/272/B1, 13-03-01/HOL/24//273/B2 and 13-03-01/HOL/24/274/B1; and
  - (iii) 13-03-01/HOL/24/278/B1;
- (j) the seismic survey report (document ref: 9.1);
- (k) the sub-surface safety assessment report (document ref: 9.2);
- (l) the preliminary study of gas design capacity (document ref: 9.3);
- (m) the landscaping plans drawing nos: 13-03-01/HOL/24/240-264/B1 and 13-03-01/HOL/24/266-268/B1;
- (n) the statutory undertakers' apparatus plan drawing no: 13-03-01/HOL/24/346/B1;
- (o) the routing plan drawing no: 13-03-01/HOL/24/405/B1; and
- (p) the draft CEMP and annexes 1 - 4 (document ref 6.5 rev4, August 2016),

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

(2) A plan or document so certified under paragraph (1) is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### Application of the Hedgerows Regulations 1997

36. Regulation 6 of the Hedgerows Regulations 1997(23) is to be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

- “(k) Or for carrying out development which has been authorised by a development consent pursuant to the Planning Act 2008”.

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(23) S.I. 1997/1160. There are amendments to this Statutory Instrument which are not relevant to this Order.

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

37. 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 for any consent, agreement or approval required or contemplated by any of the provisions of this Order such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

### **Appeals relating to decisions under requirements**

38.—(1) Where the relevant planning authority—

- (a) refuses an application for any consent, agreement or approval of that authority required by a requirement listed in Schedule 2 (requirements) to this Order or grants that consent, agreement or approval subject to conditions; or
- (b) does not give notice to the undertaker of its decision on an application for any consent, agreement or approval of that authority required by a requirement listed in Schedule 2 (requirements) of this Order within 16 weeks beginning with the day immediately following that on which the application is received by that authority or within such shortened or extended period as may at any time be agreed upon in writing between the undertaker and that authority,

Article 40 (arbitration) does not apply but the undertaker may by notice appeal to the Secretary of State.

(2) Any appeal to the Secretary of State under paragraph (1) must be made under Part III (control over development) of the 1990 Act as if the requirement in Schedule 2 (requirements) of this Order which is the subject of the appeal were a condition under subsection 78(1)(b) of the 1990 Act.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 7 of the Gas Act 1986<sup>(24)</sup>.

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

39.—(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 is to prejudice the operation of any agreement to which this article applies.

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

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

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(24) 1986 c. 44; section 7 is amended by section 5 of the Gas Act 1995 (c. 45), and sections 76 and 108 of the Utilities Act 2000 (c. 27).

- (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.

**Arbitration**

**40.** Without prejudice to article 38 (appeals relating to decisions under requirements), any difference or dispute under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

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

*Giles Scott*  
Head of Energy Infrastructure Planning and Coal  
Liabilities  
Department of Business, Energy and Industrial  
Strategy

15th March 2017

## SCHEDULES

### SCHEDULE 1

Article 3

#### AUTHORISED DEVELOPMENT

##### *NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT*

**Work No.1A**—An underground gas storage cavity at GR, E370280.37, N369293.28 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1B**—An underground gas storage cavity at GR, E370787.74, N369459.53 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1C**—An underground gas storage cavity at GR E371332.02, N369744.22 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1D**—An underground gas storage cavity at GR E370832.07, N369022.17 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1E**—An underground gas storage cavity at GR, E371002.50, N369237.99 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1F**—An underground gas storage cavity at GR E371300.15, N369287.26 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1G**—An underground gas storage cavity at GR E371103.31, N368976.85 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1H**—An underground gas storage cavity at GR, E370195.52, N370206.82 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1J**—An underground gas storage cavity at GR E371075.22, N370242.38 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

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**Work No.1K**—An underground gas storage cavity at GR E370590.41, N369240.06 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1L**—An underground gas storage cavity at GR E370978.36, N370499.76 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1M**—An underground gas storage cavity at GR E370914.66, N368757.87 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1N**—An underground gas storage cavity at GR E371186.66, N368630.79 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1P**—An underground gas storage cavity at GR E371368.25, N368892.81, of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1Q**—An underground gas storage cavity at GR E371605.04, N369035.91, of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1R**—An underground gas storage cavity at GR, E371578.01, N369311.02 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1S**—An underground gas storage cavity at GR E371574.94, N369612.17 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1T**—An underground gas storage cavity at GR E371749.84, N369855.91 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

**Work No.1U**—An underground gas storage cavity at GR E372023.83, N369978.09 of up to 100m diameter by up to 130m deep formed by solution mining within a depth range of 450m and 850m below ground level with a maximum drilling depth of no more than 33m below the bottom of the 30 feet marls formation identified in the seismic survey report.

#### *ASSOCIATED DEVELOPMENT*

**Work No.2A** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage—

Drilling equipment will include drilling rig, mud tanks, mud pumps, water/brine tanks, generators, cement silo, chemical store, fuel store, casing racks, pipe bin, collar bin, task



lighting, temporary offices, security fencing, hardstanding, self-contained amenity facility and stores.

Solution mining equipment will include solution mining wellhead with isolation valves and instrumentation, brine water and nitrogen pipework manifolds, isolation and shutdown valves, instrumentation, sediment collection vessel, security fencing, hardstanding, electrical and instrument kiosks, on-demand and security lighting, power and communication cables, sump and sump pump, access road, access gates and access platforms.

Gas conversion equipment will include gas wellhead with isolation valves and instrumentation, brine, nitrogen and gas pipework manifolds, isolation and shutdown valves, instrumentation, rig to remove downhole casing under pressure (“Snubbing” rig), security fencing, hardstanding, electrical and instrument kiosks, on demand and security lighting, power and communication cables, sump and sump pump and access platforms.

Gas storage equipment will include gas wellhead with isolation valves and instrumentation, gas and nitrogen pipework manifolds, isolation and emergency shutdown valves, instrumentation, glycol/methanol injection package (including storage vessel), operational access steelwork, security fencing, hardstanding, electrical and instrument kiosks, on-demand and security lighting, power and communication cables, sump and sump pump and access platforms.

**Work No.2B** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2C** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2D** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2E** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2F** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2G** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2H** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2J** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

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**Work No.2K** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2L** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2M** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2N** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2P** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2Q** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2R** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work. No.2S** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2T**– A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.2U** – A gated access wellhead compound area of up to 80m x 60m reducing after cavity drilling to no more than 50m by 50m containing vertical wells connecting the wellhead to the underground gas storage cavity. Equipment required during drilling, solution mining, gas conversion and gas storage described in Work No.2A.

**Work No.3A** – A buried low-pressure water pipeline 300m long and 508mm external diameter from the existing infrastructure at the Holford Gas Storage Limited former temporary solution mining compound off Drakelow Lane to the new solution mining compound (Work No.4). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

**Work No.3B** – A buried low-pressure brine pipeline 300m long and 508mm external diameter from the existing infrastructure at the Holford Gas Storage Limited former temporary solution mining compound off Drakelow Lane to the new solution mining compound (Work No.4). To be

laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

**Work No.4** – A solution mining compound including pumphouse building, water boosting pumps, liquid nitrogen storage, vaporisation and distribution equipment, brine degassing tanks, weak brine pumps, electrical switchrooms, distributed control system, control and amenities building, temporary construction offices and initial construction facilities including laydown areas, security fence, task lighting, sump and sump pump.

**Work No.5A** – A network of buried water pipework with a combined total length of 8,100m and external diameters ranging between 274mm and 508mm from the solution mining compound (Work No.4) to the wellhead locations (Work Nos 2A to 2U). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

**Work No.5B** – A network of buried brine pipework with a combined total length of 10,140m and external diameters ranging between 274mm and 508mm from the solution mining compound (Work No.4) to the wellhead locations (Work Nos 2A to 2U). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

**Work No.5C** – A network of two buried nitrogen pipelines (high and low pressure) with a combined total length of 16,200m and 60mm external diameter from the solution mining compound (Work No.4) to the wellhead locations (Work Nos 2A to 2U). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

**Work No.5D** – A network of buried electrical power and communication cables with a combined total length of 17,000m from the solution mining compound (Work No.4) to the wellhead locations (Work Nos 2A to 2U), the gas processing plant (Work No.14) and the national transmission system connection compound (Work No.12). To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

**Work No.6** – An internal site access road network, including drainage, culverts and bridges at watercourses, to the wellhead compounds (Work Nos 2A to 2U), gas processing plant (Work No.14), solution mining compound (Work No.4), 132kV substation compound (Work No.25), the gas marshalling compounds (Work Nos 20 and No.21) and temporary construction laydown area (Work No.16) at the first gas marshalling compound (Work No.20).

**Work No.7** – A site access road including drainage and culverts from the existing entrance on King Street (A530) to the gas processing plant (Work No.14), the national transmission system connection compound (Work No.12), the office, control and maintenance building (Work No.15) and the temporary construction laydown areas (Work No.16).

**Work No.8** – Not used.

**Work No.9** – A new pumping tank and a new surge vessel installed within the brine purification plant at Lostock works including pipework and valving connecting into the existing pumping system.

**Work No.10** – A pipebridge and walkway installed at the Runcorn site as part of the installation of 600m of 508mm external diameter brine pipeline across the Weston Canal (Weaver Navigation) and then buried within the Telford Wall, between the Manchester Ship Canal and the Weston Canal eventually discharging into the Manchester Ship Canal.

**Work No.11** – Re-commissioning of the Whitley pumping station for a period of 10 years from the completion of the authorised development including the installation of the pumphouse equipment (two booster pumps, two sump pumps, pipework, electrical equipment and variable speed drives) electrical supply from the Scottish Power Energy Networks supply (Work No.27) transformer, civil works and pipework, surge vessel, new roof, lighting and painting.

**Work No.12** – A fenced compound and connection to the National Grid's national gas transmission system high pressure gas pipe adjacent to King Street (A530). Including a remotely operated valve, commissioning bypass, a pig trap, connection insulation joint, instrumentation (including gas flow

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metering and gas calorific value metering), filters and emergency shutdown valve telemetry plus control equipment housed within a kiosk.

**Work No.13** – A buried gas pipeline 500m long and 915mm external diameter between the national gas transmission system connection (Work No.12) and the gas processing plant (Work No.14). To be laid via open trench construction not less than 1.2 metre below ground and in-filled and contoured to the surrounding land.

**Work No.14** – A gas processing plant including security fencing, lighting, electrical substation, instrument room, compressor house, first gas fill compressor, gas compressors, motor coolers, oil coolers, gas coolers, drying towers, air cooled condensers, regeneration heaters, water heaters building, gas manifold, metering skid, fuel gas skid, pig launcher and receiver, knock out drums and vessels, filters, flowmeters, control valves, exchangers, transformers, nitrogen package including buffer vessel, methanol/glycol recovery including pumps and storage tanks, regeneration heating vents, water heater vents, separators, emergency cold vent, surface water interceptor pit and pumps.

**Work No.15** – An office, control and maintenance building and car park with 40 parking spaces located adjacent to the gas processing plant (Work No.14).

**Work No.16** – Six temporary construction laydown areas including installation of cabins and provision of car parking with 260 parking spaces.

**Work No.17** – A buried townswater pipeline supply 450m long and 60mm external diameter from the existing supply that runs alongside King Street (A530) to the administration building (Work No.15). To be laid via an open trench construction not less than 900mm below ground in-filled and contoured to the surrounding land.

**Work No.18** – A buried sewer pipeline 450m long and 200mm external diameter routed from the administration building (Work No.15) to the existing manifold that runs alongside King Street (A530). To be laid via an open trench construction not less than 900mm below ground in-filled and contoured to the surrounding land.

**Work No.19A** – Two buried gas pipelines of 1140m long and 915mm (gas trading) and 219mm (first gas fill) external diameter respectively routed between the gas processing plant (Work No.14) and the gas marshalling compound (Work No.20). To be laid via open trench construction not less than 1.2metre below ground and in-filled and contoured to the surrounding land.

**Work No.19B** – Two buried gas pipelines of 700m long and 915mm (gas trading) and 219mm (first gas fill) external diameter respectively routed between the gas marshalling compound (Work No.20) and gas marshalling compound (Work No.21). To be laid via open trench construction not less than 1.2metre below ground and in-filled and contoured to the surrounding land.

**Work No.19C** – A buried gas pipeline of 340m long and between 219mm and 324mm external diameter from the gas processing plant (Work No.14) to wellhead compound (Work No.2H). To be laid via open trench construction not less than 1.2metre below ground and in-filled and contoured to the surrounding land.

**Work No.20** – A gas marshalling compound including security fencing, lighting, control kiosk, and an underground pipework manifold system with valves that have extended stems (for operation above ground) connecting gas distribution pipework (Work No.22) to seven wellhead compounds (Work Nos 2A, 2B, 2C, 2E, 2J, 2K and 2L).

**Work No.21** - A gas marshalling compound including security fencing, lighting, control kiosk, and an underground pipework manifold system with valves that have extended stems (for operation above ground) connecting gas distribution pipework (Work No.22) to eleven wellhead compounds (Work 2D, 2F, 2G, 2M, 2N, 2P, 2Q, 2R, 2S, 2T and 2U).

**Work No.22** – A network of buried gas pipelines with a combined total length of 13,150m and external diameter between 219mm and 324mm from the gas marshalling compounds (Work No.20 and No.21) to the individual wellheads (Work No.2A to No.2U NB: excluding Work No.2H which

is detailed in Work No.19C above). To be laid via open trench construction not less than 1.2metre below ground in-filled and contoured to the surrounding land.

**Work No.23** – An electrical compound adjacent to the solution mining compound (Work No.4) including a brick sub-station, security fencing, lighting local transformers, associated switchgear and power factor correction equipment.

**Work No.23A** – A 200m long 33kV electrical supply cable routed overhead and underground from the Scottish Power Energy Networks overhead supply to the electrical compound (Work No.23).

**Work No.24** – A buried fibre optic cable of up to 550 metres from the Holford Gas Storage Limited former temporary solution mining compound to the solution mining compound (Work No.4). To be laid via open trench construction not less than 1.2metre below ground in-filled and contoured to the surrounding land.

**Work No.25** – A 132kV to 33kV substation compound, from the existing Scottish Power Energy Networks overhead pylon 132kV power infrastructure. The compound will include switch/control room, security fencing, lighting, a pylon, local transformers, associated switchgear and power factor correction equipment to supply the gas processing plant (Work No.14).

**Work No.26** – Two 950m long 33kV electrical supply cables routed (buried and above ground) between the 132kV substation (Work No.25) and the electrical substation associated with the gas processing plant (Work No.14).

**Work No.27** – An overhead 50m long 11kV electrical supply cable from the existing local Scottish Power Energy Networks overhead pole supply to the Whitley Pumping Station (Work No.11).

**Work No.28A** – A buried gas pipeline 570m long and 915mm external diameter between the gas marshalling compound (Work No.20) and the Holford Gas Storage Limited gas marshalling compound. To be laid via open trench construction not less than 1.2metre below ground in-filled and contoured to the surrounding land.

**Work No.28B** – A buried gas pipeline 1,810m long and 915mm external diameter between the gas marshalling compound (Work No.20) and the Stublach Gas Storage Project (Storengy) gas infrastructure. To be laid via open trench construction not less than 1.2metre below ground in-filled and contoured to the surrounding land.

**Work No.29A** – A buried water pipeline 1,650m long and 508mm external diameter connecting between the solution mining compound (Work No.4) and Stublach Gas Storage Project (Storengy) solution mining infrastructure. To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

**Work No.29B** – A buried brine pipeline 1,650m long and 508mm external diameter connecting between the solution mining compound (Work No.4) and Stublach Gas Storage Project (Storengy) solution mining infrastructure. To be laid via open trench construction not less than 1 metre below ground in-filled and contoured to the surrounding land.

**Work No.30** - Diversion of the Scottish Power Energy Networks 11kV overhead cable located to the north of Work No.2E with a length of up to 250m including installation of two new poles.

**Work No.31** – Diversion of the Scottish Power Energy Networks 33kV overhead cable located to the west of Work No.2F with a length of up to 500m including installation of three new poles.

**Work No.32** – Diversion of the Scottish Power Energy Networks 11kV overhead cable located to the east of Work No.2H with a length of up to 180m including installation of two new poles.

**Work No.33** – Diversion of the Scottish Power Energy Networks 33kV overhead cable located to the east of Work No.2J with a length of up to 515m including installation of five new poles.

**Work No.34** – Diversion of the Scottish Power Energy Networks 33kV overhead cable located to the west of Work No.2P with a length of up to 250m including installation of four new poles.

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**Work No.35** – A series of precise level points 3.5m in length driven into the ground to monitor any changing underlying ground movements.

## SCHEDULE 2

Article 3

### REQUIREMENTS

#### Time limits

1. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

#### Authorised development to be carried out in accordance with certified plans and documents and with matters approved under requirements

- 2.—(1) The authorised development must be carried out in accordance with—
- the plans and documents certified by the Secretary of State as true copies of the documents referred to in this Order;
  - subject to requirement 20, any other plans, schemes or documents approved in writing by the relevant planning authority pursuant to the requirements; and
  - the parameters specified in Tables 1 – 11 below.
- (2) In these tables “AOD” means above ordnance datum.

**Table 1**

#### Gas Processing plant (Work No.14)

<i>Building or structure (part of Work No.14)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 33-34 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 33-34 metres AOD)</i>
Control room workshop	30.0	40.0	5.0	
Substation	20.0	25.0	4.0	
Instrument room (DCS)	6.0	8.0	4.0	
Compressor house (2 off)	20.0	28.0	10.0	
First gas fill compressor and cooler package	6.0	28.0	7.0	
Motor coolers (10 off)	6.0	8.0	4.0	
Gas coolers	18.0	22.0	5.0	

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<i>Building or structure (part of Work No.14)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 33-34 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 33-34 metres AOD)</i>
Drying towers (4 off)	4.0	4.0	10.0	
Air cooled condensers (2 off)	6.0	8.0	4.0	
Regeneration heaters (6 off)	12.0	6.0	5.0	
Water heater buildings (2 off)	10.0	25.0	8.0	
Transformers /VSD's (5 off)	6.0	15.0	5.0	
Glycol storage (2 off)	15.0	21.0	4.0	
Gas Preheater Boiler Vents (4 off)	0.8 (external diameter) 0.69 (internal diameter)	–	10.0	10.0
Glycol Regeneration Boiler Vents (6 off)	0.8 (external diameter) 0.22 (internal diameter)	–	10.0	10.0
Emergency cold vent	0.60(Diameter)	–	25.0	25.0

**Table 2**

**Solution mining compound (Work Nos 4 & 23)**

<i>Building or structure (part of Work No.4 or 23)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 37-38 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 37-38 metres AOD)</i>
Pumphouse for both weak brine and water booster pumps	12.5	65.0	4.0	

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<i>Building or structure (part of Work No.4 or 23)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 37-38 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 37-38 metres AOD)</i>
Pump switchrooms (2 off)	10.0	20.0	3.5	
Control and amenities building	10.0	14.0	3.5	
Distributed control system building	6.0	8.0	3.5	
Electrical compound/ switchroom (Work No 23)	20.0	25.0	3.5	
Liquid nitrogen storage vaporisation package	8.0	16.0	3.0	
Liquid nitrogen storage compound	10.0	20.0	4.0	
Brine de-gassing tanks (2 off)	15.0	20.0	4.0	
Within concrete bund	20.0	25.0	3.5	
Nitrogen vent	0.08 (Diameter)		9.0	5.0

**Table 3**

**Gas marshalling compounds (Work Nos 20 & 21)**

<i>Building or structure (Part of work no.20 or 21)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 37-38 metres AOD for work no.20 and 40 metres AOD for work no.21)</i>	<i>Minimum height (metres above existing site level of approximately 37-38 metres AOD for work no.20 and 40 metres AOD for work no.21)</i>
Compound with security fence and building listed below:	50.0	50.0	3.0	2.4
Control kiosk	3.0	4.0	2.4	
Security lighting/ camera	1.0 (diameter)		5.5	3.0



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**Table 4**

**Electrical 132kV to 33kV sub-station (Work No.25)**

<i>Building or structure (Part of work no.25)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 37-38 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 37-38 metres AOD)</i>
Compound with security fence for all equipment listed below:	50.0	80.0	3.0	2.4
Transformers (2 off)	5.0	12.0	7.0	
Isolators (5 off)	2.5	6.0	6.5	
Power correction equipment	2.5	3.0	4.0	
Control room	12.0	8.0	3.6	
Switchroom	12.0	20.0	3.6	
New 132kV pylon (1 off) (Adjacent to existing pylon)	5.0 at base Arms =14.0	5.0 at base	28.0	

**Table 5**

**Wellhead compound—drilling phase (Work Nos 2A to 2U)**

<i>Building or structure (Part of work no.2A to 2U)</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 33-34 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 33-34 metres AOD)</i>
Compound for equipment listed below:	60.0	80.0	2.4	2.0
Drilling rig (vehicle mounted)	3.0	15.0	36.0	
Cement silos (2 off)	2.0	2.0	6.0	

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**Table 6****Wellhead compound—solution mining phase (Work Nos 2A to 2U)**

<i>Building or structure</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 33-34 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 33-34 metres AOD)</i>
<i>Part of work no.2A to 2U)</i>				
Compound and security fence for equipment listed below:	50.0	50.0	24.0	2.0
Solution mining wellhead	1.0	1.0	2.0	
Meter house	2.5	3.0	2.5	

**Table 7****Wellhead compound—gas operation phase (Work Nos 2A to 2U)**

<i>Building or structure</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 33-34 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 33-34 metres AOD)</i>
<i>Part of work no.2A to 2U)</i>				
Compound with security fence for equipment listed below:	50.0	50.0	3.0	2.0
Gas wellhead	1.0	1.0	4.0	
Control panel	3.0	4.0	3.0	
Glycol injection package	3.0	4.0	4.0	
Security lighting/camera	1.0 (Diameter)		5.5	3.0

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**Table 8****Lostock works (Work No.9)**

<i>Building or structure</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 30 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 30 metres AOD)</i>
<i>Part of work no.9)</i>				
Pumping tank	6.0 (Diameter)		6.0	
Surge vessel (in bund)	2.5	7.0	3.0	

**Table 9****Whitley pumping station (Work No.11)**

<i>Building or structure</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 50 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 50 metres AOD)</i>
<i>Part of work no.11)</i>				
Existing pumphouse (to be refurbished)	10.0	12.0	4.0	
Surge vessel	1.5(Diameter)	3.5	2.5	
Transformer	3.0	4.0	2.5	

**Table 10****Runcorn site (Work No.10)**

<i>Building or structure</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 10.5 metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 10.5 metres AOD)</i>
<i>Part of work no.10)</i>				
Pipebridge with walkway	5.0	50.0	15.5	18.0
Brine discharge pipeline	0.5(Diameter)	600.0		
Diffuser pipe	0.4(Diameter)	15.0		

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**Table 11**

**National transmission system compound (Work No.12)**

<i>Building or structure</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above existing site level of approximately 32metres AOD)</i>	<i>Minimum height (metres above existing site level of approximately 32 metres AOD)</i>
<i>Part of work no.12)</i>				
Compound with security fence for equipment listed below:	50.0	60.0	3.0	2.4
Pig trap area	8.0	17.0	2.4	
Control equipment kiosk	3.0	4.0	2.4	
Meter cabinet	0.6	1.5	1.5	
Security lighting/camera	1.0(Diameter)		6.0	3.0

**Construction Environmental Management Plan**

3.—(1) No part of the authorised development is to commence until a CEMP for that part has been submitted to and approved in writing by the relevant planning authority.

(2) The CEMP submitted under sub-paragraph (1) must be in accordance with the draft CEMP.

(3) The construction of the authorised development must be carried out in accordance with the CEMP approved under sub-paragraph (1).

(4) The CEMP must include mitigation measures in accordance with those set out in chapters 7 to 14 inclusive, 18, 19 and 22 to 25 inclusive of the environmental statement.

(5) The CEMP must incorporate the following plans and programmes—

- (a) landscaping and visual impacts plan;
- (b) surface and ground water management plan;
- (c) soil management plan;
- (d) sediment control plan;
- (e) site waste management plan;
- (f) biodiversity management plan;
- (g) noise and vibration management and monitoring plan;
- (h) air quality and dust management plan;
- (i) archaeological management plan;
- (j) traffic management plan;
- (k) lighting plan; and
- (l) construction phasing plan.

(6) Each of the plans and programmes detailed in sub-paragraph (4)(a)-(l) must incorporate the following—

- (a) responsibilities;
  - (b) consent requirements;
  - (c) general control measures;
  - (d) specific control measures;
  - (e) monitoring and measurement; and
  - (f) actions to be taken in the event of an emergency.
- (7) The CEMP must require adherence to working hours of 07:00 and 19:00 on Mondays to Fridays and 07:00 and 14:00 on Saturdays except for—
- (a) noisy construction operations which will take place between 08.00 and 18.00 on Mondays to Fridays and 08.00 to 14.00 on Saturdays; and
  - (b) continuous construction operations, including—
    - (i) drilling;
    - (ii) weld testing or pipeline testing;
    - (iii) concrete pour;
    - (iv) commissioning; and
    - (v) solution mining.
- (8) The CEMP must require that construction operations at the Runcorn site (Work No.10) shall take place between April and September except for limited scrub clearance activities which shall take place between August and September.

#### **Approval of details**

- 4.—(1) No part of the authorised development may be commenced until the following details have been submitted to and approved in writing by the relevant planning authority—
- (a) details of the siting and size of—
    - (i) each wellhead compound (Work Nos 2A to 2U);
    - (ii) the solution mining compound (Work No.4);
    - (iii) the fenced compound and connection to the national transmission system (Work No.12);
    - (iv) the gas processing plant (Work No.14);
    - (v) the office, control and maintenance building (Work No.15);
    - (vi) the construction and laydown areas (Work No.16);
    - (vii) the gas marshalling compounds (Work Nos 20-21);
    - (viii) the electrical compound (Work No.23); and
    - (ix) the substation compound (Work No.25).
  - (b) details of the design and external appearance of any buildings or structures to be provided;
  - (c) means of access and details of the construction of each access;
  - (d) details of the construction of the surface of each compound including the stripping and stockpiling of soils, the location and the storage of such, and the materials to be used in the construction of each compound;
  - (e) details of any fencing to be erected; and

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- (f) details of any operational lighting to include the number, height and location of any stanchions to be erected or mobile floodlighting units to be used, the number of floodlights, their lux levels, angles of luminance and extent of light distribution.

### **Control of noise during solution mining and gas operation**

5.—(1) Operation of the authorised development must not begin until a written scheme for noise management including monitoring and attenuation of the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme for noise management submitted in accordance with sub-paragraph (1) must require that the site-attributable noise during solution mining and gas operation shall not exceed a rating free-field noise level equivalent to the daytime and night-time background noise levels for each noise sensitive receptor detailed in Table 9.9 and Section 18.5.2 of the Environmental Statement (Document Ref. 6.1) with exception of the noise sensitive receptors set out in Table 12 below.

**Table 12**

<i>Receptor</i>	<i>Night-Time dB LA90</i>	<i>Maximum Permissible Daytime Operational Free-field Rating Noise Levels dBLAeq1hour (07.00 – 23.00)</i>	<i>Maximum Permissible Night-Time Operational Free-field Rating Noise Levels dBLAeq15 mins (23.00-07.00)</i>
3 – Drakelow Farm	32	34	34
4 – Halfway House	32	33	33
7 – Brownhayes Farm	30	37	37
8 – Drakelow Hall Farm	31	32	32
10 – Drakelow Gorse Farm	30	33	33
14 – Newholme Farm	31	33	33

(3) The undertaker must implement the schemes for noise management approved in accordance with sub-paragraph (1).

### **Landscaping**

6.—(1) No part of the authorised development may be commenced until a landscape scheme has been submitted to and approved in writing by the relevant planning authority for that part. The scheme must include—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) a requirement that the height of soil bunds must not exceed 3 metres;
- (e) a requirement that topsoil and subsoil must not be imported to or exported from the site except for contaminated soil found on site that must be exported to a site permitted to accept it;
- (f) hard surfacing materials;
- (g) details of existing trees to be retained, with measures for their protection during the construction period; and

(h) implementation timetables for all landscaping works.

(2) The landscape scheme submitted under sub-paragraph (1) must be in accordance with the landscaping plans.

(3) All landscaping must be carried out in accordance with the landscape scheme approved under requirement 6(1).

(4) All landscaping carried out in accordance with requirement 6(3) must be maintained by the undertaker for the lifetime of the authorised development.

(5) Any tree or shrub planted as part of the landscape 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, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

(6) In the event of a brine leakage, a soil and landscaping scheme detailing those habitats, trees, shrubs or hedgerows damaged, together with remedial measures proposed, shall within a period of three months of the leak's detection be submitted to and approved in writing by the relevant planning authority. The approved scheme shall be undertaken during the following planting season and maintained by the undertaker for the lifetime of the authorised development.

#### **Accesses to works**

7.—(1) No part of the authorised development may be commenced until written details of the siting, design and layout of any new permanent or temporary means of access to a highway for that part has been submitted to and approved in writing by the relevant planning authority.

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

#### **Construction traffic**

8. At the highway access to King Street (A530) comprised in Work No.7, notices must be erected prior to the start of construction of the authorised development and maintained throughout the period of construction, indicating to drivers the required route for traffic entering and leaving the site during the period of construction as shown on the routing plan.

#### **Limits on heavy goods vehicle movements**

9.—(1) The maximum number of heavy goods vehicle movements to and from the authorised development must not exceed 80 per day (40 in and 40 out).

(2) The number of heavy goods vehicles which enter the authorised development must be recorded by the site operator. These records must be available for inspection at the site office and a copy of these records must be submitted to the relevant planning authority every six months, or within five working days of such records being requested by the relevant planning authority.

#### **Internal roads**

10. The access road comprised in Work No.7 must, throughout the construction and use of the authorised development, be metalled and drained and kept clear of debris along its entire length at all times.

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

11.—(1) No part of the authorised development may be commenced until written details of all temporary and permanent fences or other means of enclosure required for the construction and or use of that part have been submitted to and approved in writing by the relevant planning authority.

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(2) Any temporary fencing must be removed on completion of construction of the authorised development.

(3) Any approved permanent fencing comprised in the authorised development must be completed before those works are brought into use.

### **Ground and surface water and pollution prevention**

**12.**—(1) No part of the authorised development may be commenced until written details of the surface and foul water drainage system (including means of pollution control) for that part have, after consultation with the sewerage and drainage authority, been submitted to and approved in writing by the relevant planning authority. The surface and foul water drainage system must be constructed in accordance with the details approved under this sub-paragraph.

(2) No part of the authorised development involving the diversion of any stream or watercourse may commence until a scheme and programme for that part for its diversion has been submitted to and, after consultation with the Environment Agency, approved in writing by the relevant planning authority. The stream or watercourse must be diverted in accordance with the approved scheme and programme.

(3) Unless otherwise permitted under sub-paragraphs (1) and (2) above, throughout the period of construction, operation, decommissioning, restoration and aftercare of the authorised development, all ditches, watercourse, field drainage systems and culverts must be maintained such that the flow of water is not impaired or the drainage onto and from adjoining land rendered less effective.

(4) All oil, diesel oil and lubricants stored within the authorised development for any purpose must be stored on a base impervious to both oil and water and surrounded by an impermeable bund wall. The bunded area must be capable of containing 110% of the largest tank's capacity and all drain pipes, fill pipes and sight gauges shall be enclosed within its curtilage.

### **Hedgerows**

**13.** No part of the authorised development is to commence until written details of any hedgerows to be removed during construction of that part have been submitted to and approved in writing by the relevant planning authority.

### **Land Contamination**

**14.**—(1) No part of authorised development comprised in Work No.10 may commence until a written scheme (which may be included in the CEMP) to deal with the contamination of any land, including groundwater, identified in the investigation and assessment report prepared under sub-paragraph (2) as likely to cause significant harm to persons or significant pollution of controlled waters or ground waters or the environment has been submitted to and approved by the relevant planning authority.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and a remediation strategy identifying the remedial measures to be taken, if required, to render the land fit for its intended purpose, and a verification plan outlining how achieving the remedial objectives will be demonstrated.

(3) Remediation, if required, must be carried out in accordance with the scheme approved under sub-paragraph (1).

(4) A verification report demonstrating completion of any remediation works and the effectiveness of the remediation must be submitted to and approved in writing by the local planning authority.



## **Archaeology**

**15.**—(1) No part of the authorised development may be commenced until for that part, a written scheme for the investigation of areas of archaeological interest has been submitted to and approved in writing by the relevant planning authority.

(2) The written scheme of investigation must identify areas where a programme of archaeological investigation is required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the archaeological scheme must be by a suitably qualified person or body approved by the relevant planning authority. Any archaeological works or watching brief must be carried out in accordance with the approved archaeological scheme.

## **External lighting**

**16.** No use of the authorised development may be commenced until written details of the permanent operational external lighting to be installed as part of Works No .14, including measures to prevent light spillage, have been submitted to and approved by the relevant planning authority and any approved means of lighting must subsequently be installed and retained for the duration of the operation of the authorised development.

## **Restoration scheme**

**17.**—(1) Upon the permanent cessation of use of the authorised development or, in any event, by not later than forty-nine years after the start of use of the authorised development, whichever is the earlier, a scheme of restoration and aftercare must be submitted for approval in writing by the relevant planning authority.

(2) The scheme must include—

- (a) any proposed future uses for the relevant authorised development site;
- (b) details of structures and buildings to be demolished and retained;
- (c) details of the means of removal of materials of demolition;
- (d) phasing of demolition and removal;
- (e) details for the remediation of ponding; and
- (f) details of restoration works and phasing thereof.

(3) The approved scheme must be implemented in full by not later than 24 months after the date of the relevant planning authority's written approval.

## **Decommissioning**

**18.**—(1) Subject to sub-paragraph (2), in the event that no gas is stored within any of the cavities within a period of 10 years following the completion of all solution mining works comprising part of the authorised development, a scheme detailing the appropriate measures for decommissioning of the authorised development must be submitted to the relevant planning authority for approval.

(2) Not later than ten years after the start of use of the authorised development a scheme detailing the appropriate measures for decommissioning of the pipe bridge and diffuser forming part of Work No.10 must be submitted to the relevant planning authority for approval.

(3) A scheme approved under sub-paragraph 17(1) or 17(2) must be implemented in full within 24 months of its approval by the relevant planning authority.

### **Requirement for written approval**

19. Where under any of the above requirements the approval or agreement of the relevant planning authority is required that approval or agreement must be given in writing and not unreasonably withheld.

### **Amendments to approved details**

20.—(1) With respect to the parameters specified in requirement 2 and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any other requirement (the “Approved Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Plans, Parameters, Details or Schemes are to be taken to include the amendments approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 2 above must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

### **European protected species**

21.—(1) No part of authorised development shall commence until final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by that part or in any of the trees and shrubs to be lopped or felled during construction of that part.

(2) Where a European protected species is shown to be present, the relevant part of the authorised development shall not begin until, after consultation with Natural England and the relevant planning authority, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority.

(3) Unless otherwise agreed in writing by the relevant planning authority after consultation with Natural England, the undertaker shall implement the protection and mitigation measures approved under sub-paragraph (2).

(4) In this requirement European protected species has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(25) (as amended).

### **Conveyance of gas, water and brine**

22. Save for potable water, fluids used for drilling operations and waste process fluids from the gas processing plant, all natural gas, water and brine for use in, stored within or produced by the authorised development must be conveyed to and from the authorised development only by pipeline.

### **Environmental management system for normal operation**

23. The authorised development may not be used for gas storage until the undertaker has implemented an environmental management system compliant with ISO 14001 or an equivalent recognised standard.

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(25) [S.I. 2010/490](#).

### Control of radio emissions

24.—(1) No part of the authorised development shall be commenced until a control of radio emissions plan has been submitted to and approved in writing by the relevant planning authority, after consultation with the University of Manchester, (a Royal Charter corporation registered under number RC000797), of Oxford Road, Manchester, M13 9PL.

(2) The control of radio emissions plan must include a scheme to ensure that the authorised development operates at all times so the total radiated power emitted from the gas processing plant, Work No 14, does not exceed the following limits, integrated across the total bandwidths in Table 13 below.

**Table 13**

<i>Centre Frequency in MHz</i>	<i>Bandwidth in MHz</i>	<i>in</i>	<i>Limit from ITU-R 769 (Table 1) in dBW</i>	<i>Path loss in dB</i>	<i>Effective Isotropic Radiated Power in specified bandwidth in dBW</i>
151.525	2.95		-199	115.8	-83.2
325.3	6.6		-201	122.4	-78.6
408.05	3.9		-203	124.4	-78.6
611	6		-202	127.9	-74.1
1413.5	27		-205	135.2	-69.8
1665	10		-207	136.6	-70.4
2695	10		-207	140.8	-66.2
4995	10		-207	146.2	-60.8

(3) The control of radio emissions plan shall also include the following—

- (a) a scheme to establish and operate a liaison forum between the undertaker, the relevant planning authority and the University of Manchester, to meet at least annually to discuss and to seek, without prejudice to any enforcement powers held by the planning authority, the resolution of any issues raised by any party relating to the effect of radio emissions from the authorised development;
- (b) a scheme to secure the testing of equipment and plant prior to the commencement of operations at the gas processing plant, Work No 14, so as to ensure compliance with sub-paragraph (2);
- (c) a scheme to secure any mitigation measures which are required to ensure compliance with sub-paragraph (2); and
- (d) a scheme to secure the monitoring of radio emissions to demonstrate compliance with sub-paragraph (2) during the normal operation of equipment and plant at the gas processing plant, Work No 14, including provision for reporting to the relevant planning authority and the University of Manchester on an annual basis and on reasonable request.

(4) The undertaker must—

- (a) implement the control of radio emissions plan and associated schemes approved in accordance with sub-paragraphs (2) and (3); and

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- (b) ensure that the authorised development operates at all times in accordance with the limits in sub-paragraph (2).

SCHEDULE 3

Article 10

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Subject to street works</i>
County of Cheshire,  District of Cheshire West and Chester	Yatehouse Lane  For the purposes of Works Nos 5A, 5B, 5C, 5D, 6, 19B and 22.  (drawing nos. 13-03-01/HOL/24/324, 325, 326)  Where crossed by the authorised development within the Order limits.
County of Cheshire  District of Cheshire West and Chester	Drakelow Lane  For the purposes of Work Nos: 5A, 5B, 5C, 5D, 6, 22, 28B, 29A and 29B.  (drawing nos.13-03-01/HOL/24/322, 323)  Where crossed by the authorised development within the Order limits.
County of Cheshire  District of Cheshire West and Chester	Rudheath RB7  For the purposes of Work Nos: 5A, 5B, 5C, 5D, 6, 22, 26, 28B, 29A and 29B.  (drawing nos. 13-03-01/HOL/24/322 and 327)  Where crossed by the authorised development within the Order limits.

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SCHEDULE 4

Article 11

STREETS SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
County of Cheshire, District of Cheshire West and Chester	Yatehouse Lane	Formation of permanent gated highway access with visibility splay including, removal of hedgerow, altering of carriageway alignment and verge for the purpose of Work No.6 and optional change to bellmouth of existing access point (drawing No.13-03-01/HOL/24/407).
County of Cheshire, District of Cheshire West and Chester	Drakelow Lane	Formation of two new gated highway accesses with visibility splay including removal of hedgerow, altering of carriageway alignment and verge for the purpose of Work No.6 (drawing No.13-03-01/HOL/24/408).

SCHEDULE 5

Article 13

STREETS AND RIGHT OF WAY 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>
County of Cheshire, District of Cheshire West and Cheshire	Yatehouse Lane	For the purposes of Works Nos: 5A, 5B, 5C, 5D, 6, 19B.
		For a distance of 168m measured between points 5 and 6 on the street works and access plan (see drawing No.13-03-01/HOL/24/413).
		For a distance of 126m measured between points 7 and 8 on the street works and access plan (See drawing No.13-03-01/HOL/24/413).

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<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>
		For a distance of 120m measured between points 9 and 10 on the street works and access plan (see drawing No.13-03-01/HOL/24/413).
	Drakelow Lane	<p>For the purposes of Work Nos: 5A, 5B, 5C, 5D, 6, 22, 28B, 29A and 29B</p> <p>For a distance of 54m measured between points 1 and 2 on the street works and access plan (see drawing No.13-03-01/HOL/24/413).</p> <p>For a distance of 152m measured between points 3 and 4 on the street works and access plan (see drawing No.13-03-01/HOL/24/413).</p>
	Restricted Byway (RB7)	<p>For the purposes of Work Nos:5A, 5B, 5C, 5D, 6, 22, 26, 28B, 29A and 29B-</p> <p>Rudheath RB7 – temporary stopping up of 195m, as shown on drawing No.13-03-01/HOL/24/327.</p>

SCHEDULE 6

Article 14

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
County of Cheshire, District of Cheshire West and Chester	<p>Holford, site private road access/egress and crossing of Yatehouse Lane formed within Work No.6.</p> <p>Access to site access road from Yatehouse Lane and crossing of Yatehouse Lane and egress from the site private access road to Yatehouse Lane as shown on the streets and access</p>

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
	<p>plan between points 5 and 6 (see drawing No.13-03-01/HOL/24/413).</p> <p>Holford, site private road access/egress and crossing of Drakelow Lane formed within Work No.6.</p> <p>Access to private access from Drakelow Lane and crossing of Drakelow Lane and egress from the site private access road to Drakelow Lane as shown on the streets and access plan between points 3 and 4. (see drawing No.13-03-01/HOL/24/413).</p>

SCHEDULE 7

Article 19

TEMPORARY CLOSURE AND WORKS IN THE CANAL

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Land affected</i>	<i>(3)</i> <i>Purpose of temporary closure</i>
The Borough of Halton, County of Cheshire	The area of the Weaver Navigation Canal as shown hatched in black on drawing No.13-03-01/HOL/24/236	For the purposes of Work No.10 as set out in Schedule 1.

SCHEDULE 8

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAYBE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession maybe taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
District of Cheshire West and Chester County of Cheshire	1.04 to 1.19	Construction and carrying out of the authorised development, including; provision of wellhead compounds for storage of equipment; provision	Work Nos: 2U, 2T, 2S, 5A, 5B, 5C, 5D, 6, 22 and 35

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(1) <i>Area</i>	(2) <i>Number of land shown on land plan</i>	(3) <i>Purpose for which temporary possession maybe taken</i>	(4) <i>Relevant part of the authorised development</i>
		of pipeline, cable and site access road networks; worksite; landscaping; and access for these same purposes.	
District of Cheshire West and Chester County of Cheshire	2.04 to 2.16	Construction and carrying out of the authorised development, including; provision of wellhead compounds for storage of equipment; provision of pipeline cable and site access road networks; worksite; landscaping; and access for these same purposes.	Work Nos: 2P, 2Q, 2R, 5A, 5B, 5C, 5D, 6, 22, 31, 34 and 35
District of Cheshire West and Chester County of Cheshire	3.03 to 3.11	Construction and carrying out of the authorised development, including; provision of wellhead compounds for storage of equipment; provision of pipeline cable and site access road networks; worksite; landscaping; and access for these same purposes.	Work Nos: 2M, 2N, 5A, 5B, 5C, 5D, 6, 22 and 35
District of Cheshire West and Chester County of Cheshire	4.02 to 4.06	Construction and carrying out of the authorised development, including; provision of wellhead compounds for storage of equipment; provision of pipeline cable and site access road networks; worksite;	Work Nos: 2K, 5A, 5B, 5C, 5D, 6, 22 and 35



<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession maybe taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
		landscaping; and access for these same purposes.	
District of Cheshire West and Chester County of Cheshire	5.01	Construction and carrying out of the authorised development, including; provision and fit-out of gas marshalling compound; provision of pipeline, cable and site access road networks; diversion of overhead power lines; worksite; and access for these same purposes.	Work Nos: 5A, 5B, 5C, 5D, 6, 19B and 22

SCHEDULE 9

Article 34

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID  
AS ELECTRICITY AND GAS UNDERTAKER

**Application**

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

**Interpretation**

2. In this Part of this Schedule—

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

“acceptable insurance” means a third party liability insurance effected and maintained by the promoter with a limit of indemnity of not less than £25,000,000 (Twenty-Five Million

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Pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”. Such policy must include (but is not limited to )—

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

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the promoter’s liability to National Grid Electricity Transmission Plc and National Grid Gas Plc to a cap of not less than £10,000,000 (Ten Million Pounds) per asset per event up to a total liability cap of £25,000,000 (Twenty-Five Million Pounds) (in a form reasonably satisfactory to the undertaker and where required by the undertaker, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the promoter’s liability to National Grid Electricity Transmission Plc and National Grid Gas Plc for an amount of not less than £10,000,000 (Ten Million Pounds) per asset per event up to a total liability cap of £25,000,000 (Twenty-Five Million Pounds) (in a form reasonably satisfactory to the undertaker);

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989(26), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply,

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

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

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

(26) 1989 c. 29; the definition of “electrical plant” has been amended by section 108 of and paragraphs 24 and 38 to Schedule 6 to the Utilities Act 2000 (c. 27).

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

“functions” includes powers and duties;

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

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the promoter to submit for the undertaker’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including 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 and assess the works to be executed;

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

“promoter” means the undertaker as defined in article 2 of this Order;

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 7(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 7(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (the undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”); and

“undertaker” means, as appropriate, National Grid Electricity Transmission Plc and National Grid Gas Plc in their capacity as—

- (a) an electricity undertaker, being a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(27).

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(27) 1986 c. 44; section 7(1) has been amended by sections 149 and 197 of and Schedule 23 to the Energy Act 2004 (2004 c. 20), and by regulations 18 of the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704).

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3. Except for paragraphs 4 (apparatus in stopped up streets), 9 (retained apparatus: protection of Gas Undertakers), 11 (expenses) and 12 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the promoter and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

#### **Apparatus of undertakers in stopped up streets**

4.—(1) Without prejudice to the generality of any other protection afforded to the undertaker elsewhere in the Order, where any street is stopped up under the Order, if the undertaker has any apparatus in the street or accessed via that street the undertaker will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to the undertaker, or will procure the granting to the undertaker of, legal easements reasonably satisfactory to the specified undertaker 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 13 (temporary prohibition or restriction of use of streets), an undertaker will 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 promoter, in the case of the powers conferred by article 17 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the undertaker and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the undertaker or any interruption in the supply of electricity and/or gas, as the case may be, by the undertaker is caused, the promoter must bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to the undertaker for any loss sustained by it; and
- (b) indemnify the undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the promoter with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of an undertaker or its contractors or workmen; and the undertaker will give to the promoter reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by the undertaker, save in respect of any payment required under a statutory compensation scheme, without first consulting the promoter and giving the promoter an opportunity to make representations as to the claim or demand.

#### **Acquisition of land**

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the promoter may not acquire any land interest or apparatus or override any easement and/or other interest of the undertaker otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the undertaker and the promoter) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the promoter in respect of any apparatus laid or erected in land belonging to or secured by the promoter, the promoter must as the undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and the promoter acting reasonably and which must be no less favourable on the whole to the undertaker unless otherwise agreed by the undertaker, and it will be the responsibility of the promoter to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The promoter and the undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the undertaker and/or other enactments relied upon by the undertaker as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by the undertaker under paragraphs 9 or 10 or any other paragraph of this Part of this Schedule shall not be taken to constitute agreement under paragraph 6.

### **Removal of apparatus**

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the undertaker in question in accordance with sub-paragraphs (2) to (5) inclusive.

(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 promoter requires the removal of any apparatus placed in that land, it must give to the undertaker 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 the undertaker reasonably needs to remove any of its apparatus) the promoter must, subject to sub-paragraph (3), afford to the undertaker to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the promoter, or the promoter 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 undertaker must, on receipt of a written notice to that effect from the promoter, 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 undertaker to use its compulsory purchase powers to this end unless it elects to do so.

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

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

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

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

(2) If the facilities and rights to be afforded by the promoter and agreed with the undertaker under sub-paragraph (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 the undertaker 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 in the matter will be referred to arbitration in accordance with paragraph 16 (arbitration) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the promoter to the undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of Gas Undertakers**

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

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

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

(3) The promoter must not commence any works to which sub-paragraphs (1) and (2) apply until the undertaker has given written approval of the plan so submitted.

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

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

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, the undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the promoter and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker will be entitled to watch and inspect the execution of those works.

(7) Where the undertaker requires any protective works to be carried out by itself or by the promoter (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If the undertaker in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the promoter under paragraph 7(2).

(9) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

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

(a) comply with sub-paragraphs (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 must comply with the undertaker'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 HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the promoter shall implement an appropriate ground mitigation scheme save that the undertaker retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

### **Retained apparatus: protection of Electricity Undertakers**

**10.**—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the promoter under paragraph 7(2) or otherwise, the promoter must submit to the undertaker a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of

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any apparatus, the plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement and describe—

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

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

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by the undertaker's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The promoter must not commence any works to which sub-paragraphs (2) or (3) apply until the undertaker has given written approval of the plan so submitted.

(5) Any approval of the undertaker required under sub-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, the undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the promoter and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker will be entitled to watch and inspect the execution of those works.



(8) Where the undertaker requires any protective works to be carried out by itself or by the promoter (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

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

(10) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

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

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the promoter must comply with the undertaker's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

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

- (a) any costs reasonably incurred by or compensation properly paid by the undertaker in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by the undertaker as a consequence of the undertaker;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the undertaker;
- (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;

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- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.
- (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part of this Schedule—
  - (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the promoter or, in default of agreement, is not determined by arbitration in accordance with article 40 (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 undertaker by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the promoter.
- (4) For the purposes of sub-paragraph (3)—
  - (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.
- (5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker 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 Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of the undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the undertaker, or the undertaker becomes liable to pay any amount to any third party, the promoter will—

- (a) bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and

- (b) indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid other than arising from any default of the undertaker.
- (2) The fact that any act or thing may have been done by the undertaker on behalf of the promoter or in accordance with a plan approved by the undertaker or in accordance with any requirement of the undertaker or under its supervision will not (unless sub-paragraph (3) applies), excuse the promoter from liability under the provisions of this sub-paragraph (1) unless the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.
- (3) Nothing in sub-paragraph (1) shall impose any liability on the promoter in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents; and
  - (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by the undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 12.
- (4) The undertaker must give the promoter reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.
- (5) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by the undertaker or in respect of which the undertaker has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of the undertaker’s apparatus until the following conditions are satisfied—
- (a) unless and until the undertaker is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the promoter has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and the undertaker has confirmed the same to the promoter in writing; and
  - (b) unless and until the undertaker is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the promoter has procured acceptable insurance (and provided evidence to the undertaker that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and undertaker has confirmed the same in writing to the promoter.
- (6) In the event that the promoter fails to comply sub-section (5) nothing in this Part of this Schedule shall prevent the undertaker from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

**13.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the promoter, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between

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the promoter and the undertaker in respect of any apparatus laid or erected in land belonging to the promoter on the date on which this Order is made.

### **Co-operation**

**14.**—(1) Where in consequence of the proposed construction of any of the authorised works, the promoter or an undertaker requires the removal of apparatus under paragraph 7(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraphs 9(5), 9(7), 10(6) or 10(8), the promoter shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the undertaker’s undertaking and each undertaker shall use its best endeavours to co-operate with the promoter for that purpose.

(2) For the avoidance of doubt whenever the statutory undertaker’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

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

### **Arbitration**

**16.** Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1), 9 and 11(5) any difference or dispute arising between the promoter and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the promoter and the undertaker, be determined by arbitration in accordance with article 40 (arbitration).

## **PART 2**

### **FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS**

**17.** For the protection of the operator referred to in this Part of this Schedule, the following provisions, unless otherwise agreed in writing between the undertaker and the operator concerned, are to have effect.

**18.** In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003<sup>(28)</sup>;

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

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

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

“electronic communications code network” means—

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(28) 2003 c. 21.

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

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

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

**19.** The exercise of the powers conferred by article 29 (statutory undertakers) is subject to paragraph 23 of Schedule 2 of the Telecommunications Act 1984**(29)**.

**20.**—(1) Subject to paragraphs 20(2) and 20(3), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

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

the undertaker must bear and pay the reasonable and proper costs incurred by the operator in making good such damage or restoring the supply as the case may be and must make proper and reasonable compensation to an operator for any other expenses, loss, damaged, penalty or costs incurred by it.

(2) Nothing in paragraph 20(1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

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

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

## PART 3

### FOR THE PROTECTION OF THE CANAL & RIVER TRUST

**23.** The following provisions are to have effect for the protection of the Canal & River Trust, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

**24.** In this Part of this Schedule—

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(29) 1984 c. 12.

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

“the engineer” means an engineer appointed by the Canal & River Trust and approved by the undertaker for the purposes of this Order;

“Canal & River Trust” means the Canal & River Trust acting as a trustee of the Waterways Infrastructure Trust or any successor body performing the same functions and which holds any waterways within the order limits;

“code of practice” means the Code of Practice for Works Affecting the Canal & River Trust April 2016 as amended from time to time;

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

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

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use and/or occupation of any Canal & River Trust property;

“specified work” means so much of Work No.10 as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway; and

“waterway” means the canal within the order limits and includes any pond or other waterway or course situated on Canal & River Trust property, any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of the Canal & River Trust and held or used by it in connection with its statutory functions.

**25.—(1)** Where under this Part of this Schedule or anywhere else under this Order the Canal & River Trust (or the engineer) is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the Canal & River Trust must observe the provisions of its code of practice for works affecting waterways and where the code of practice is adhered to and its provisions observed, such consent must not be unreasonably withheld. For the avoidance of doubt, any consent may be issued subject to reasonable conditions including any condition which required compliance with the code of practice or any applicable part thereof and in respect of article 16 (discharge of water), it is reasonable to impose the following conditions—

- (a) requiring the payment of such charges as are typically charged by the owner of the relevant waterway;

- (b) specifying the maximum volume of water which may be discharged in any period; and
  - (c) authorising the Canal & River Trust on giving reasonable notice (except in an emergency, when the Canal & River Trust may require immediate suspension) to the undertaker to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Canal & River Trust
- (2) In so far as any specified work or the acquisition of rights under and/or over or use of the Canal & River Trust property is or may be subject to the code of practice, the Canal & River Trust must—
- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from that code; and
  - (b) use its reasonable endeavours to avoid any conflict arising between the application of that code and the proper implementation of the authorised development pursuant to this Order.

**26.—**(1) The undertaker must not exercise the powers conferred by article 20 (compulsory acquisition of land) or the powers conferred by section 11(3) of the 1965 Act against the Canal & River Trust in respect of any Canal & River Trust property.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any of the Canal & River Trust property, unless preventing such access is with the consent of the Canal & River Trust.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by article 29 (statutory undertakers) to this Order, in relation to any right of access of the Canal & River Trust to Canal & River Trust property, but such right of access may be diverted with the consent of the Canal & River Trust.

(4) The undertaker shall not exercise any power conferred by this Order to discharge water into the waterway under article 16 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, save as to surface water discharge which will not require the consent of the Canal & River Trust.

(5) The undertaker shall not exercise the powers conferred by article 18 (authority to survey and investigate the land) of this Order in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

**27.—**(1) The undertaker must before commencing construction of any specified work or carrying out any works on Canal & River Trust property whatsoever supply to the Canal & River Trust proper and sufficient plans of that work and such further particulars available to it as the Canal & River Trust may within 14 days of the submission of the plans reasonably require for the reasonable approval (having regard to the undertaker's timetable for the construction of the authorised development) of the engineer and the specified work must not be commenced without such approval except in accordance with article 40 (arbitration).

(2) If—

- (a) at the expiry of the period of 28 days beginning on the date on which plans (and any other particulars reasonably required under sub-paragraph (1)) have been submitted to the Canal & River Trust for its consent under sub-paragraph (1); and
- (b) the engineer has not served
  - (i) notice of refusal of those plans; and
  - (ii) the grounds for refusal upon of those plans,

the undertaker may serve upon the engineer a determination notice.

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(3) If–

- (a) the undertaker has served a determination notice referred to in paragraph 27(2) and the period of 14 days from the date of service has expired; and
- (b) the engineer has not served upon the undertaker;
  - (i) notice of refusal of those plans; and
  - (ii) the grounds of refusal,

the engineer is deemed to have approved the plans as submitted.

(4) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under paragraph 27(2), the Canal & River Trust gives notice to the undertaker that the Canal & River Trust desires itself to construct any part of a specified work which in the opinion of the engineer may or will cause any detriment in respect of Canal & River Trust property or the safe operation of any waterway, then if the undertaker requires such part of such specified work to be constructed the Canal & River Trust must 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 of the undertaker.

(5) 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 commencement of the construction of a specified work to prevent any detriment and such protective works (which for the avoidance of doubt may include requirements to fence any proposed works in order to separate the same from the waterways, ponds or watercourses situated on the Canal & River Trust property either on a permanent or temporary basis) as may be reasonably necessary to prevent detriment must be constructed by the undertaker, as agreed between the parties or settled by arbitration in accordance with article 40 (arbitration) and such protective works must be carried out at the expense of the undertaker with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

(6) The undertaker shall pay to the Canal & River Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (5) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewals of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving shall be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

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

**28.** The undertaker shall not use any land or property of the Canal & River Trust forming part of the waterway for the passage or siting of vehicles, plant and machinery employed in the construction of the specified works other than–

- (a) with the consent in writing of the engineer whose consent shall not be unreasonably withheld; and



- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
  - (i) for the prevention of the detriment; or
  - (ii) in order to avoid or reduce any inconvenience to the Canal & River Trust, its officers and agents and all other persons lawfully on such land or property, but nothing in this paragraph shall apply in relation to anything done in accordance with any approval given by the Canal & River Trust under paragraph 27.

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

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

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

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

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

**30.**—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker shall consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by the Canal & River Trust—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of those works,

and shall have regard to such views as may be expressed by the Canal & River Trust to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995<sup>(30)</sup> and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways.

(2) Any specified work and any protective works to be constructed must, when commenced, be constructed—

- (a) with all reasonable dispatch (having regard to the undertaker’s timetable for construction of the authorised development) in accordance with the plans approved or deemed to have

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(30) 1995 c. 1.

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been approved or settled under paragraph 27(3) and with any requirements made under paragraph 27(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 detriment as possible;
- (d) in such a manner to ensure that no materials are discharged or deposited into any stream, watercourse, waterway, pond or any other water feature on or forming part of the Canal & River Trust property otherwise than in accordance with article 16 (discharge of water); and
- (e) in such a manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterway, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust.

(3) If any damage or detriment to the waterway is caused by the carrying out of, or in consequence of the construction of a specified work or protective work, the undertaker must make good such damage and must pay to the Canal & River Trust all reasonable and proper expenses that the Canal & River Trust may incur or may be put and reasonable and proper compensation for any loss which it may sustain by reason of such damage, interference or obstruction.

(4) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the Canal & River Trust or its servants, contractors or agents or any liability on the Canal & River Trust with respect of any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

(5) Nothing in this Order shall authorise the undertaker to make or maintain any permanent work in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) (maintenance of waterways) of the Transport Act 1968<sup>(31)</sup> to maintain the waterway.

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

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

(2) The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified works 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.

**32.**—(1) The undertaker shall provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

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(31) 1968 c.73.

(2) The Canal & River Trust, on being given reasonable notice, must afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker shall reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

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

(2) The undertaker must repay to the Canal & River Trust all reasonable and proper fees, costs, charges and expense reasonably incurred by the Canal & River Trust in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work.

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

**35.**—(1) The undertaker must pay to the Canal & River Trust all reasonable and proper costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to and reasonably incurred by the Canal & River Trust—

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

and the undertaker must indemnify and keep indemnified the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraph 35(1)(a) and (b). The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervisions or in accordance with any directions or awards of an arbitrator is not (if it was done without negligence on the part of the Canal & River Trust or any person in its employ or of its contractors or agents) to relieve the undertaker from any liability under the provision of this sub-paragraph.

(2) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand and save as such conduct would be contrary to law no settlement or compromise of such a claim or demand must be made without the prior written consent of the undertaker, such consent not to be unreasonably withheld or delayed.

**36.** The Canal & River Trust must, on receipt of a written 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 Part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim or to be made pursuant to this Part of this Schedule.

**37.** In the assessment of any sums payable to the Canal & River Trust under this Part of this Schedule, there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the Canal & River Trust if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the

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payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**38.** The undertaker and the Canal & River Trust may enter into, and carry into effect, agreement for the transfer to the undertaker of—

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

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

**40.** The undertaker must repay to the Canal & River Trust in accordance with the Canal & River Trust's code of practice all reasonable fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

- (a) in constructing any part of a specified work on behalf of the undertaker or in constructing any protective works under the provisions of paragraph 27(5) 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 or any protective works;
- (c) in respect of the employment or procurement of the services of any persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting Canal & River Trust property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or incident arising from the construction or failure of a specified work or any protective works;
- (d) in respect of any additional temporary lighting of the Canal & River Trust property in the vicinity of the specified works or any protective works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or protective work; and
- (e) In bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network.

**41.—(1)** If any permanent or temporary alterations or additions to the Canal & River Trust property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of the Canal & River Trust property, the continued safe operation of the waterway or the prevention of a detriment such alterations and additions may be carried out by the Canal & River Trust and if the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable cost of 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 the Canal & River Trust in maintaining, working and, when necessary, renewing any such alternations or additions.

(2) If during the construction of a specified work by the undertaker, the Canal & River Trust gives notice to the undertaker that the Canal & River Trust desires itself to construct that part of the

specified work which in the opinion of the engineer is endangering the stability of the Canal & River Trust property or the safe operation of any waterway then, if the undertaker decided that part of the specified work is to be constructed, the Canal & River Trust shall assume construction of that part of the specified work under paragraph 27(4), pay to the Canal & River Trust all reasonable expenses to which the Canal & River Trust may be put and compensation for any loss which it may suffer by reason of the execution by the Canal & River Trust of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 27, 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 the Canal & River Trust property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

**42.** Any additional expenses which the Canal & River Trust may reasonably incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to the Canal & River Trust.

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

(2) Nothing in sub-paragraph (2) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or wilful default of the Canal & River Trust, its officers, servants, contractors or agents.

**44.** Any difference arising between the undertaker and the Canal & River Trust under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration in accordance with article 40 (arbitration) of this Order.

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

## PART 4

### FOR THE PROTECTION OF SCOTTISH POWER ENERGY NETWORKS

**46.** For the protection of SPEN the following provisions are, unless otherwise agreed in writing between the undertaker and SPEN, to have effect.

**47.** In this Part of this Schedule—

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(32)), belonging to or maintained by SPEN;

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(32) 1989 c. 29; the definition of “electrical plant” has been amended by section 108 of and paragraphs 24 and 38 to Schedule 6 to the Utilities Act 2000 (c. 27).

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“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

“SPEN” means Scottish Power Energy Networks Holdings Limited.

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

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

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

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to SPEN written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SPEN reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to SPEN the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SPEN shall, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of Schedule shall be constructed in such manner and in such line or situation as may be agreed between SPEN and the undertaker or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) SPEN shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40 (arbitration), and after the grant to SPEN 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) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to SPEN that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by SPEN, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of SPEN.

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

**51.—(1)** Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to SPEN 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 SPEN or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or the land for which the alternative apparatus is to be substituted.

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

**52.**—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 50(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 50(2), the undertaker shall submit to SPEN a plan, section and description of the works to be executed. Any submission must note the time limits imposed on SPEN under sub-paragraph (3) below.

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

(3) Any requirements made by SPEN under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If SPEN in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (6) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 50(2).

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

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

**53.**—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to SPEN the reasonable expenses incurred by SPEN in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new connection.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 40 (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 SPEN by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus 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 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 SPEN 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 SPEN 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.

**54.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 50(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of SPEN the undertaker is to—

- (a) bear and pay the cost reasonably incurred by SPEN in making good such damage or restoring the supply; and
- (b) make reasonable compensation to SPEN for any other expenses, loss, damages, penalty or costs incurred by SPEN, by reason or in consequence of any such damage or interruption.

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

(3) SPEN must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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



## PART 5

### FOR THE PROTECTION OF HOLFORD GAS STORAGE LIMITED

#### Application

**56.** For the protection of the undertaker as referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the promoter and the undertaker, have effect.

#### Interpretation

**57.** In this Part of this Schedule—

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

“acceptable insurance” means a third party liability insurance effected and maintained by the promoter with a limit of indemnity of not less than £10,000,000.00 (Ten Million Pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation)—

- (a) the undertaker as a co-insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £4,000,000.00 (Four Million Pounds) per event or £4,000,000.00 (Four Million Pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of the undertaker to cover the promoter’s liability to the undertaker to a cap of not less than £10,000,000.00 (Ten Million Pounds) per asset per event up to a total liability cap of £10,000,000.00 (Ten Million Pounds) (in a form reasonably satisfactory to the undertaker and where required by the undertaker, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of the undertaker to cover the promoter’s liability to the undertaker for an amount of not less than £10,000,000.00 (Ten Million Pounds) per asset per event up to a total liability cap of £10,000,000.00 (Ten Million Pounds) (in a form reasonably satisfactory to the undertaker);

“apparatus” means cavities, pipelines, cables (electrical and datacoms), roads, compounds and equipment owned by the undertaker and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

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“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

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

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

“INOVYN Enterprises” means INOVYN Enterprises Limited (Company No. 04651437);

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus of the undertaker including 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 and assess the works to be executed;

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

“promoter” means the undertaker as defined in article 2 of this Order;

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 62(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 13 of the Linewatch’s “Special Requirements for the safe working in close proximity to high pressure pipelines” (Revision No 16.03); and

“undertaker” means Holford Gas Storage Limited (Company No. SC254265).

**58.** Except for paragraphs 59 (apparatus in stopped up streets), 62 (retained apparatus), 63 (expenses) and 64 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the promoter and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of undertaker in stopped up streets**

**59.—(1)** Without prejudice to the generality of any other protection afforded to the undertaker elsewhere in the Order, where any street is stopped up under the Order, if the undertaker has any apparatus in the street or accessed via that street the undertaker will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to the undertaker, or will procure the granting to the statutory undertaker of, legal easements reasonably satisfactory to the specified undertaker 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 13 (temporary prohibition or restriction of use of streets), an undertaker will 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**

**60.** The promoter, in the case of the powers conferred by article 17 (protective work to buildings), must exercise those powers in accordance with paragraph 62 of this Part of this Schedule.

### **Acquisition of land**

**61.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the promoter may not acquire any land interest or apparatus or override any easement and/or other interest of the undertaker otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the undertaker and the promoter) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the promoter in respect of any apparatus laid or erected in land belonging to or secured by the promoter, the promoter must as the undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and the promoter acting reasonably and which must be no less favourable on the whole to the undertaker unless otherwise agreed by the undertaker, and it will be the responsibility of the promoter to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Any agreement or consent granted by the undertaker under paragraphs 64 or any other paragraph of this Part of this Schedule shall not be taken to constitute agreement under paragraph 61.

### **Retained apparatus**

**62.**—(1) Not less than 56 days before the commencement of any specified works the promoter must submit to the undertaker a plan in respect of those works.

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

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

(3) The promoter must not commence any works to which sub-paragraphs (1) and (2) apply until the undertaker has given written approval of the plan so submitted.

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

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

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(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, the undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the promoter and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker will be entitled to watch and inspect the execution of those works.

(7) Where the undertaker requires any protective works to be carried out by itself or by the promoter (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) Nothing in this paragraph precludes the promoter from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(9) The promoter will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the undertaker notice as soon as is reasonably practicable by calling the undertaker's emergency telephone line on 02476 183900 or such other telephone number notified by the undertaker to the promoter in writing and as soon as is reasonably practicable give to the undertaker a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (10) at all times.

(10) At all times when carrying out any works authorised under the Order the undertaker must comply with the undertaker's policies for safe working in proximity to apparatus.

## Expenses

**63.** Subject to the following provisions of this paragraph, the promoter must pay to the undertaker on demand all charges, costs and expenses reasonably incurred by the undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) in connection with the cost of the carrying out of any assessment of the undertaker's apparatus under the Control of Major Accident Hazards Regulations 2015<sup>(33)</sup> reasonably necessary as a consequence of the authorised works;
- (b) implementing any mitigation measures required as a result of any assessment referred to in sub-paragraph (a) reasonably necessary as a consequence of the authorised works;
- (c) the approval of plans;
- (d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

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(33) S.I. 2015/483.

- (e) 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.

## **Indemnity**

**64.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance, decommissioning or failure of any of the authorised works by or on behalf of the promoter or in consequence of any act or default of the promoter (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the promoter under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or property of the undertaker, or there is any interruption in any service provided by the undertaker, or the undertaker becomes liable to pay any amount to any third party (including but not limited to INOVYN Enterprises), the promoter will bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage, restoring the supply or paying such amount and indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid provided that at all times the undertaker shall be under an obligation to take reasonable steps to mitigate its loss.

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

(3) Nothing in sub-paragraph (1) shall impose any liability on the promoter in any circumstances in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents;
- (b) loss of profits, loss of use, loss of revenue, loss of contract, loss of goodwill, loss of products, loss of productivity, loss of profitability or any indirect or consequential losses of any nature whatsoever save that the sums payable by the promoter under sub-paragraph (1) shall include a sum equivalent to the relevant costs in circumstances where
  - (i) the undertaker is liable to make payment of the relevant costs pursuant to the terms of an agreement between the undertaker and a gas storage customer relating to the storage of gas in the undertaker's apparatus; and
  - (ii) the existence of that agreement and the extent of the undertaker's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the promoter,

but not otherwise.

(4) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by the undertaker or in respect of which the undertaker has an easement, wayleave or lease for its apparatus or any other interest or to carry out any works within 15 metres of the undertaker's apparatus until the following conditions are satisfied—

- (a) unless and until the undertaker is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the promoter has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction

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of the authorised works) and the undertaker has confirmed the same to the promoter in writing; and

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

(5) In the event that the promoter fails to comply with sub-section (4) nothing in this Part of this Schedule shall prevent the undertaker from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

(6) “relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a gas storage customer as a consequence of any restriction of the use of the undertaker’s apparatus as a result of the construction, maintenance or failure of any specified works or any such act or omission as mentioned in sub-paragraph (1); “gas storage customer” means any person licensed to ship, transmit, distribute or supply gas under the Gas Act 1986<sup>(34)</sup>.

### **Co-operation**

**65.**—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker makes requirements for the protection or alteration of apparatus under paragraphs 62(5) or 62(7), the promoter shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe, efficient and economic operation of the undertaker’s apparatus and the undertaker shall use its best endeavours to co-operate with the promoter for that purpose.

(2) For the avoidance of doubt whenever the undertaker’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

**66.** If in consequence of the agreement reached in accordance with paragraph 61(1) of this Schedule or the powers granted under this Order the access to any apparatus is materially obstructed, the promoter must provide such alternative means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**67.** Any difference or dispute arising between the promoter and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the promoter and the undertaker, be determined by arbitration in accordance with article 40 (arbitration).

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(34) 1986 c. 44.

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## EXPLANATORY NOTE

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

This Order authorises Keuper Gas Storage Limited (referred to as “the promoter” in Parts 1 and 5 of Schedule 9 and “the undertaker” in the remainder of this Order) to construct and operate an underground gas storage facility at Holford Brinefield, Cheshire.

The Order permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans etc.) may be inspected free of charge during working hours at the Planning Reception Desk, Cheshire West and Chester, HQ, Nicholas Street, Chester, CH1 2NP.