
STATUTORY INSTRUMENTS

2016 No. 779

INFRASTRUCTURE PLANNING

The Meaford Gas Fired Generating Station Order 2016

Made - - - - *19th July 2016*

Coming into force - - *2nd August 2016*

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

The application has been examined by a Panel, which has made a report to the Secretary of State under section 74(2) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Panel, 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.

Accordingly, the Secretary of State, in exercise of the powers in section 114 and 120 of the 2008 Act, makes the following Order:

PART 1

Introduction

Citation and commencement

1. This Order may be cited as the Meaford Gas Fired Generating Station Order 2016 and comes into force on 2nd August 2016.

Interpretation

2.—(1) In this Order—

(1) 2008 c. 29.

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

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

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

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

“1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(6);

“1984 Act” means the Road Traffic Regulation Act 1984(7);

“1990 Act” means the Town and Country Planning Act 1990(8);

“1991 Act” means the New Roads and Street Works Act 1991(9);

“2008 Act” means the Planning Act 2008;

“access rights of way plan” means the plan identified with document reference number 2.4 and certified as the access rights of way plan by the Secretary of State for the purposes of this Order;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) to this Order which is development within the meaning of section 32 of the 2008 Act;

“book of reference” means the book of reference with document reference number 4.3 and certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

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

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis;

“design and access statement” means the design and access statement certified as such by the Secretary of State for the purposes of this Order;

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

“footpath” and “footway” have the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act and in respect of the latter, will be Staffordshire County Council unless otherwise stated;

“the land plan” means the plan submitted as revision 1 dated September 2015 and certified as the land plan by the Secretary of State for the purposes of this Order;

“limits of deviation” means, in respect of numbered works 1 to 7 inclusive the outer limits of the corresponding numbered area shown on the works plans;

“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, and any derivative of “maintain” must be construed accordingly;

(3) 1961 c. 33.
(4) 1965 c. 56.
(5) 1980 c. 66.
(6) 1981 c. 66.
(7) 1984 c. 27.
(8) 1990 c. 8.
(9) 1991 c. 22.

“Meaford Energy Limited” means Meaford Energy Limited (Company Registration Number 08575649) whose registered office is at Park Point, 17 High Street, Longbridge, Birmingham B31 2UQ;

“National Grid” means National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“Order land” means the land required for, or affected by, the authorised development shown on the land plan and described in the book of reference;

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

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981⁽¹⁰⁾;

“relevant planning authority” means Stafford Borough Council as the planning authority for the area in which the authorised development is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“SP Manweb” means SP Manweb Plc (company number 02366937) whose registered office is at 3 Prenton Way, Prenton CH43 3ET;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and shall include a public communications provider as defined by the Communications Act 2003⁽¹¹⁾;

“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 any footpath and “street” includes any part of a street;

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

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

“traffic authority” has the same meaning as in the 1984 Act;

“undertaker” means Meaford Energy Limited, which is the named undertaker, or any other person who for the time being has the benefit of this Order in accordance with article 7 of this Order;

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

“works plans” means the plans with document reference number 2.3 and certified as the works plans by the Secretary of State for the purposes of this Order; and

“WPD” means Western Power Distribution (West Midlands) Plc whose registered office is Avonbank, Feeder Road, Bristol BS2 0TB.

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

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and points on a numbered work comprised in the authorised development and shown on the works plans and access rights of way plan are taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination

⁽¹⁰⁾ 1981 c. 67.

⁽¹¹⁾ 2003 c. 21.

of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in Schedule 1 and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1E inclusive, a reference to “Work No.2” or “numbered work 2” means numbered works 2A and 2B inclusive and reference to “Work No.5” and “numbered work 5” means numbered works 5A and 5B inclusive.

- (5) The expression “includes” is to be construed without limitation.
- (6) All areas described in square metres in the book of reference are approximate.
- (7) References to any statutory body include that body’s successor bodies as they from time to time have jurisdiction over the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) The undertaker is granted development consent for the authorised development, as set out in Schedule 1 (authorised development), subject to the provisions of this Order including the requirements set out in Schedule 2 (requirements).

(2) Subject to paragraph (3), each numbered work must be situated on the corresponding numbered area shown on the works plans.

(3) In constructing each numbered work, the undertaker may deviate within the corresponding numbered area shown on the works plans up to the limits of deviation.

(4) Development consent is only granted for development within the Order limits.

Maintenance of authorised development

4.—(1) 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, and only to the extent assessed in the environmental statement.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of authorised development

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

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

Benefit of Order

6.—(1) Subject to paragraph (2) and 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 to—

- (a) numbered work 2A(i) and numbered work 2A(ii) for which consent is granted by this Order for the benefit of the undertaker and National Grid; and
- (b) numbered work 3 for which consent is granted by this Order for the benefit of the undertaker and WPD.

Consent to transfer benefit of Order

7.—(1) Subject to paragraph (4), the undertaker, and National Grid in relation to numbered work 2A(i) and numbered work 2A(ii) and WPD in relation to numbered work 3, may—

- (a) transfer to another person (“the transferee”) 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 agreed between the undertaker, National Grid or WPD (as the case may be) and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker, National Grid or WPD (as the case may be) 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 a transfer, or grant, has been made in accordance with paragraph (1) references in this Order to the undertaker or National Grid or WPD (as the case may be), except in paragraph (3) include references to the transferee or 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 as would apply under this Order if those benefits or rights were exercised by the undertaker, National Grid or WPD (as the case may be).

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989(12) or section 7 of the Gas Act 1986(13); or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any claim that no compensation shall be payable.

(5) Where paragraph (4) applies, the undertaker must notify the Secretary of State in writing before transferring or granting any benefit referred to in paragraph (1).

Application and modification of legislative provisions

8. Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments referred to in that Schedule in their application in relation to the compulsory acquisition under this Order of a right over land by the creation of a new right.

(12) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to the section that are not relevant to this Order.

(13) 1986 c. 44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to the section that are not relevant to this Order.

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(14) (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 is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) 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) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(15);
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), is not to 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.

PART 3

STREETS

Power to alter layout, etc. of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street specified in column (2) of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3).

(2) Regardless of the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

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

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

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

(14) 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

(15) 1974 c. 40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3) of the Electricity Act 1989; Sections 61 and 65 were amended by section 133 and Schedule 7 to the Building Act 1984 (c.55), section 120 and Schedule 24 to the Environment Act 1995 (c.25) and section 162 and Schedule 15 to the Environmental Protection Act 1990. There are other amendments not relevant to this Order.

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

(6) Paragraphs (3), (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Street works

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

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

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

(3) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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

Temporary prohibition or restriction of use of streets

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

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

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access, and ensure that relevant provision is made for residents to park and for services to access properties which may be affected by the temporary alteration, diversion, prohibition or restriction of a street under this article.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets specified in column (2) of Schedule 6 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

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

- (a) any street specified in column (2) of Schedule 6 (temporary prohibition or restriction of the use of streets) 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) If a street authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent under paragraph (5)(b) that street authority is deemed to have granted consent.

Traffic Regulation

13.—(1) Without limiting the scope of the specific powers conferred by article 12 but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to when the authorised development first becomes operational—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road,

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

(2) The undertaker must not exercise the powers in article 12 or paragraph (1) of this article unless it has—

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

(3) Any prohibition, restriction or other provision made by the undertaker under article 12 or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(16).

(4) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

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

Access to works

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

- (a) form and layout the permanent means of access, or improve existing means of access, in the location specified in Schedule 4 (streets subject to permanent alteration of layout); and

(16) 2004 c.18. There are amendments to this Act not relevant to this Order.

- (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 the 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 including any structure carrying the street;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of the structure of any bridge or tunnel carrying a street; or
 - (d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) Subject to paragraphs (2) to (6), 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(17) (right to communicate with public sewers).

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

- (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.

(17) 1991 c. 56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b),(5)(c) and 36(2) of the Water Act 2003 (c.37).

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

(6) This article does not authorise any water discharge activities or groundwater activities for which a licence is required pursuant to regulation 12(b) of the Environmental Permitting (England and Wales) Regulations 2010⁽¹⁸⁾.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964⁽¹⁹⁾ (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park 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⁽²⁰⁾ have the same meaning as in that Act.

Authority to survey and investigate the land

17.—(1) The undertaker may for the purposes of this Order enter on any part of Order land identified in Part I of the book of reference or on any land which may be affected by the authorised development and—

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

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

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

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

(4) No trial holes 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) If either the highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within eight weeks of receiving the application for consent—

⁽¹⁸⁾ S.I. 2010/675, to which there are amendments not relevant to this Order.

⁽¹⁹⁾ 1964 c. 40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

⁽²⁰⁾ 1991 c. 57 as amended by S.I. 2009/3104.

(a) under paragraph (4)(a) in the case of the highway authority; or
(b) under paragraph (4)(b) in the case of the street authority,
that authority is deemed to have granted consent.

(6) 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, in accordance with Part 1 (determination of questions of disputed compensation) of the 1961 Act.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of rights

18.—(1) The undertaker may create and acquire compulsorily the rights over the Order land and impose the restrictions affecting the Order land described in Part 1 of the book of reference and shown on the land plan.

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

(3) Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restriction.

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

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

19.—(1) The 1981 Act 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 3 (preliminary notices), for subsection (1) there shall be substituted—

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

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

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

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

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

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

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

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

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

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

Time limit for exercise of authority to acquire rights compulsorily

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

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

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

Statutory authority to override easements and other rights

21.—(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(1) 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 use of land arising by virtue of contract.

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

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

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

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

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

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

Acquisition of subsoil or airspace only

22.—(1) The undertaker may acquire compulsorily such rights in the subsoil of, or the airspace over, the Order land referred to in paragraph (1) of article 18 (compulsory acquisition of rights) as may be required for any purpose for which rights or restrictions over that Order land may be created and acquired or imposed under that provision instead of acquiring any greater interest in that land.

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

Private rights

23.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to the compulsory creation and acquisition of rights or the imposition of restrictions under this Order are suspended and are unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenants, extinguished insofar as in either case their continuance would be inconsistent with the exercise by the undertaker of the right acquired or the burden of the restriction imposed—

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

whichever is earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over the Order land and which is either—

- (a) leased by the undertaker pursuant to the lease; or
- (b) subject to rights by agreement for the benefit of the undertaker,

are suspended and are unenforceable in so far as their continuance would be inconsistent with any activity authorised by this Order.

(3) Subject to the provisions of this article, all private rights and restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for so 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 or restrictive covenant under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which article 26 (statutory undertakers) applies.

(6) Paragraphs (1), (2) and (4) shall have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the creation and acquisition of rights or the imposition of restrictions over or affecting the land;
 - (ii) the undertaker's appropriation of it;

- (iii) the undertaker’s entry onto it; or
 - (iv) the undertaker’s temporary possession of it,
- that any or all of those paragraphs shall not apply to any right specified in the notice; and
- (b) any agreement made, in so far it relates to the authorised development, at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested, belongs or benefits.
- (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 or restrictive covenant is vested, belongs or benefits; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(8) References in this article to private rights and restrictive covenants over land includes any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(9) In this article—

“the lease” means the lease to be entered into by the undertaker pursuant to an option agreement dated 31 March 2015 made between (1) St Modwen Properties I Sarl; and (2) Meaford Land Limited as for a term of no less than seventy five years certain or such other lease as may be entered into from time to time for the benefit of the undertaker to construct, operate and maintain the authorised development.

Rights under or over streets

24.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace 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 the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) must 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) The undertaker must repair and make good at its own expense and to the reasonable satisfaction of the street authority any damage caused to a street or to any bridge apparatus, highway structure or street furniture in the street belonging to the street authority by virtue of its occupation and appropriation of the subsoil of, or airspace over, the street under this article.

(5) Subject to paragraph (6), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take possession of so much of the land specified in columns (1) and (2) of Schedule 9 (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 fences, debris and vegetation from that land; and
- (c) construct any works specified in relation to that land in column (3) of Schedule 9, or any other mitigation works.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(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.

(7) 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 carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in part 1 of the book of reference under article 18 (compulsory acquisition of rights); or
- (b) acquiring any right in the subsoil or of airspace over any part of the Order land identified in part 1 of the book of reference under article 22 (acquisition of subsoil or airspace only) or article 24 (rights under or over streets).

(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 provisions).

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9 (land of which temporary possession may be taken).

Statutory Undertakers

26. Subject to the provisions of Schedule 7 (protective provisions), the undertaker may—
- (a) extinguish or suspend the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plan and described in the book of reference; and
 - (b) create and acquire compulsorily the rights or impose restrictions over land belonging to statutory undertakers as shown on the land plan and described in Part 1 of the book of reference.

Apparatus and rights of statutory undertakers in streets subject to temporary prohibition or restriction

27. Where a street is temporarily altered or its use is temporarily prohibited or restricted under article 10 (power to alter layout, etc. of streets), article 12 (temporary prohibition or restriction of use of streets) any statutory utility whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 7 (protective provisions), as if this Order had not been made.

Recovery of costs of new connection

28.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 26 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 26 (statutory undertakers) any person who is—

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

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

(3) In this paragraph—

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

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

PART 6

MISCELLANEOUS AND GENERAL

Felling or lopping of trees

29.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits 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, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall 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, shall be determined under Part 1 of the 1961 Act.

Application of landlord and tenant law

30.—(1) This article applies to—

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

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

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

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

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

Operational land for purposes of the 1990 Act

31. 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).

Protective provisions

32. Schedule 7 (protective provisions) has effect.

Certification of plans etc.

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

- (a) the book of reference;
- (b) the land plan;
- (c) the works plans;

- (d) the access rights of way plan;
- (e) the environmental statement;
- (f) the design and access statement;
- (g) the illustrative landscaping plan;
- (h) the illustrative foul and surface water drainage plan; and
- (i) the illustrative cross sections drawing,

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

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

Service of notices

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

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

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

(3) For the purposes of section 7 of the Interpretation Act 1978(21) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

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

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

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

(21) 1978 c.30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

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

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

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

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

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

(10) In this article—

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

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network, or
- (b) by other means in electronic form.

Procedure in relation to certain approvals

35.—(1) Where an application is made to or a request is made of the relevant planning authority, traffic authority, highway authority, street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld.

(2) Schedule 8 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements in Schedule 2 (requirements).

(3) The procedure set out in paragraph 3 of Schedule 8 (procedure for discharge of requirements) has effect in relation to any other consent, agreement or approval required under this Order.

Arbitration

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

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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 for Business, Energy and Industrial
Strategy

19th July 2016

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Staffordshire and the Borough of Stafford—

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, and associated development under section 115(1)(b) of that Act—

Work No. 1A a generating station comprising with a combined rated electrical output of up to 299 MWe comprising—

- (a) one gas turbine building with up to two gas turbines and associated generating unit
- (b) one steam turbine building with one steam turbine and associated generating unit;
- (c) up to two exhaust gas emission flue stacks;
- (d) up to two Heat Recovery Steam Generator buildings with up to two Heat Recovery Steam Generators;
- (e) air cooled condenser; and
- (f) switchgear room.

Work No. 1B development comprising—

- (a) a workshop;
- (b) telemetry apparatus;
- (c) auxiliary distilled fuel oil generator;
- (d) a water treatment system;
- (e) a raw/fire water storage tank and up to two water storage tanks; and
- (f) a natural gas pressure regulating installation (PRI) (also known as “a gas receiving station and gas treatment compound”) within the generating station complex containing—
 - (i) full bore 450mm nominal bore manually and remotely actuated isolation valves;
 - (ii) bypass valves and isolation valves;
 - (iii) a gas filter;
 - (iv) liquid separator;
 - (v) 2 x 100% gas compressors (with a maximum rating of approximately 3000 kWe);
 - (vi) gas meter(s);
 - (vii) non-return and relief valves;
 - (viii) control and instrument kiosks;
 - (ix) electricity supply kiosk;
 - (x) a section of isolated pipe suitable for receiving a pressure inspection gauge (PIG) (also known as PIG launching/receiving facility); and
 - (xi) high pressure steel pipeline with a nominal bore of 450mm.

Work No. 1C development comprising—

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- (a) an administration/control building; and
- (b) heat network interface building.

Work No. 1D development comprising—

- (a) a 132kV switchyard containing plant required to manage the transmission of electricity to the distribution network; and
- (b) up to three transformer compounds with up to three transformers.

Work No. 1E development comprising—

- (a) security infrastructure, including cameras, perimeter fencing, gate and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns and lights;
- (c) internal roadways, car parking, pedestrian network, cycle parking and hardstanding;
- (d) foul, surface water and trade effluent drainage;
- (e) waste management infrastructure;
- (f) electricity, water, wastewater and telecommunications and other services;
- (g) site preparation works, including earthworks and enabling works and tree removal;
- (h) landscaping including tree planting, other boundary treatments and ecological mitigation;
- (i) high voltage and low voltage cabling, equipment and controls and telemetry and electrical protection auxiliary cabling;
- (j) part of underground gas pipeline connection;
- (k) other ancillary equipment; and
- (l) construction compound.

Work No. 2A development comprising site preparation and an above ground installation (AGI) (also referred to as a minimum off-take connection compound) containing—

- (a) connection to the local gas transmission system (LTS) with 400mm nominal bore all welded pipe;
- (b) an additional full bore isolation valve and intermediate vent valve;
- (c) other emergency control valves as required;
- (d) a gas meter;
- (e) galvanic isolation between the LTS and the new gas connection;
- (f) a section of isolated pipe suitable for the launch of a pipeline inspection gauge (PIG) (also referred to as a PIG launching/receiving facility);
- (g) perimeter fencing and fencing;
- (h) tree removal;
- (i) other ancillary equipment;
- (j) construction compound; and
- (k) a high pressure steel pipeline connection of approximately 30m in length with a nominal bore of 450mm.

Work No. 2B development comprising—

- (a) connection to the local gas transmission system (LTS) by way of 400mm nominal bore all welded pipe;
- (b) a high pressure steel pipeline connection of approximately 760m in length and with a nominal bore of 450mm between numbered work 2A and numbered work 1B underground

between line A-A and line B-B (approximately 10m in length), overground between line B-B and line C-C (approximately 140m in length) and underground between line C-C and line D-D (approximately 610m in length). Comprising—

- (i) pipeline marker posts;
 - (ii) cathodic protection and test system;
 - (iii) below ground drainage works;
 - (iv) tree removal;
 - (v) preparation and resurfacing of bridge deck(s) necessary for the construction and operation of the pipeline;
 - (vi) installation of pipeline support plinths to support the parts of the pipeline between lines B-B and C-C;
 - (vii) security infrastructure including perimeter fencing with gates, fencing, security cameras; and
 - (viii) any necessary control or telemetry cables;
- (c) repair of the northern bridge parapet of canal bridge 101 (Malkin's Bridge) as marked on the works plans by replacing coping stones.

Work No. 3 development comprising a 132kV underground electricity connection of up to 200m in length for the import and export of electricity from/to the existing Barlaston substation boundary comprising up to three underground high voltage electrical cables and associated telemetry and electrical protection auxiliary cabling.

Work No. 4 development comprising—

- (a) alteration of the existing site access (known as the northern access road) off the east side of Meaford Road; and
- (b) resurfacing of the northern access road between the existing site access off Meaford Road and Work No. 1, including road widening, infilling, lighting infrastructure including lighting columns and lights and drainage.

Work No. 5A development comprising temporary construction laydown and car parking area comprising—

- (a) fencing;
- (b) tree removal;
- (c) lighting infrastructure including lighting columns and lighting;
- (d) signage;
- (e) security kiosk;
- (f) weighbridge; and
- (g) staff welfare cabins.

Work No. 5B development comprising—

- (a) creation of a construction laydown and car parking area comprising—
 - (i) fencing;
 - (ii) tree removal;
 - (iii) lighting columns and lights;
 - (iv) concrete batching plant;
 - (v) signage;
 - (vi) security kiosk;

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- (vii) weighbridge; and
- (viii) staff welfare cabins.
- (b) an operational and maintenance laydown area comprising—
 - (i) hardstanding;
 - (ii) landscaping and ecological mitigation;
 - (iii) lighting columns and lights; and
 - (iv) fencing.

Work No. 6 development comprising—

- (a) replacement, maintenance or refurbishment of existing surface water drainage comprising—
 - (i) underground pipework;
 - (ii) access chambers; and
 - (iii) outfall to River Trent.
- (b) tree removal;
- (c) landscaping and ecological mitigation;
- (d) construction and maintenance of a 1500m³ surface water retention pond and vortex flow control to limit the discharge rate into the River Trent to a maximum of 15.1 litres per seconds;
- (e) foul, surface water and trade effluent drainage; and
- (f) a below ground foul water pump station.

Work No. 7 development comprising 10 metre screening vegetation buffer including tree planting, other boundary treatments and ecological mitigation,

such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1 but only within the Order limits and insofar as unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

Interpretation

1. In this Schedule—

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development excluding permitted preliminary works and the words “commencement” and “commenced” and cognate expressions shall be construed accordingly;

“the design objectives statement” means the design objectives contained within the summary of design objectives at chapter 2 of the design and access statement;

“illustrative cross sections drawing” means the illustrative cross sections through planting strip adjacent to canal drawing with drawing number 5105324-MEA-DRG-086 Rev 0 dated 24

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September 2015 that was submitted as an appendix to Document 10.7 (Applicant’s comments on the Local Impact Report) dated 22 October 2015;

“illustrative foul and surface water drainage plan” means the illustrative foul and surface water drainage strategy plan with reference number 2.5.5 and submitted with the application and regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(22);

“illustrative landscaping plan” means the illustrative landscaping plan with reference number 2.7.2 and submitted with the application under regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;

“permitted preliminary works” means the intrusive ground investigation works carried out pursuant to requirement 6 (ground investigation); and

“start-up and shut-down” means the periods of 30 minutes before the opening up of construction sites (start-up) and 30 minutes following the end of the working day (shut-down), during which the arrival of workers, changing into and out of work wear, pre-job briefing and leaving the site prior to closing and securing the site take place.

Time limits

2. The authorised development must be commenced within five years of the date that this Order is made.

Detailed design

- 3.—(1) The authorised development must be carried out in accordance with—
- (a) the approved plans listed in Table 1 below inclusive of any limits of deviation; and
 - (b) any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any requirement (as the same may be amended by approval of the relevant planning authority pursuant to requirement 19(1))

Table 1

works plans	Submission document reference number 2.3
access rights of way plan	Submission document reference number 2.4

(2) The authorised development must not exceed the maximum parameters specified in Table 2 and Table 3 below (as the same may be amended by approval of the relevant planning authority under requirement 19(1))—

(22) S.I. 2009/2264, as amended by S.I. 2014/2381.

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Table 2

<i>(1)</i> <i>Element of authorised development</i>	<i>(2)</i> <i>Maximum height</i> <i>(metres) above a site level of approximately 99 metres AOD</i>	<i>(3)</i> <i>Maximum width</i> <i>(metres)</i>	<i>(4)</i> <i>Maximum length</i> <i>(metres)</i>	<i>(5)</i> <i>Other parameters</i>
Gas turbine building (part of numbered work 1A)	25 metres	45 metres	60 metres	Maximum height 124m AOD
Each Heat Recovery Steam Generator Building (part of numbered work 1A)	35 metres	13 metres	25 metres	Maximum height AOD 134 metres
Each exhaust gas emission flue stack (part of numbered work 1A)	50 metres	–	–	Maximum height AOD 149 metres Maximum diameter 6.5 metres
Steam turbine building (part of numbered work 1A)	21 metres	26 metres	45 metres	–
Air cooled condenser (part of numbered work 1A)	26 metres	48 metres	48 metres	–
Switchgear room (part of numbered work 1A)	5 metres	10 metres	15 metres	–
Raw/fire water storage tank (part of numbered work 1B)	20 metres	–	–	Maximum diameter 15 metres
Each water storage tank (part of numbered work 1B)	20 metres	–	–	Maximum diameter 5 metres
Water treatment system (part of	10 metres	25 metres	20 metres	–

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<i>(1)</i> <i>Element of authorised development</i>	<i>(2)</i> <i>Maximum height</i> <i>(metres) above a site level of approximately 99 metres AOD</i>	<i>(3)</i> <i>Maximum width</i> <i>(metres)</i>	<i>(4)</i> <i>Maximum length</i> <i>(metres)</i>	<i>(5)</i> <i>Other parameters</i>
numbered work 1B)				
Workshop (part of numbered work 1B)	10 metres	20 metres	30 metres	–
Natural gas pressure regulating installation (PRI) (part of numbered work 1B)	5 metres	25 metres	35 metres	–
Administration/control building (part of numbered work 1C)	10 metres	10 metres	20 metres	–
Heat network interface building (part of numbered work 1C)	15 metres	20 metres	30 metres	–
Each transformer compound (part of numbered work 1D)	8 metres	15 metres	15 metres	–
132kV switchyard (part of work numbered 1D)	10 metres	42 metres	72 metres	–
Perimeter fencing (part of numbered work 1E)	2.5 metres	–	770 metres	–

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Table 3

<i>(1)</i> <i>Element of authorised development</i>	<i>(2)</i> <i>Maximum height</i> <i>(metres) above the existing site level</i>	<i>(3)</i> <i>Maximum width</i> <i>(metres)</i>	<i>(4)</i> <i>Maximum length</i> <i>(metres)</i>	<i>(5)</i> <i>Other parameters</i>
Above Ground Installation (numbered work 2A)	2.5 metres	13 metres	13 metres	–
Pipeline inspection gauge facility (part of numbered work 2A)	1.6 metres	1 metre	5.5 metres	–
Perimeter fencing (part of numbered work 2A)	2.5 metres	–	52 metres	–
Pipeline support plinth including crown of pipe (part of numbered work 2B)	2 metres	0.8 metres	1.4 metres	–

(3) To the extent that design objectives relating to any numbered work are set out in the design objectives statement, that numbered work must be designed substantially in accordance with the relevant design objective set out therein.

(4) Numbered works 1, 2 and 4 may not commence until, for that numbered work, written details have been submitted to and approved by the relevant planning authority (in consultation with the National Trust regarding the external appearance and the colour of all permanent buildings and structures) concerning—

- (a) the siting, design, external appearance, dimensions and floor levels of all permanent buildings and structures; and
- (b) the colour, materials and surface finishes of the pipeline and all permanent buildings and structures.

(5) The details to be submitted for approval under sub-paragraph (4) must include appropriately scaled plans and sectional drawings.

Provision of and implementation and maintenance landscaping

4.—(1) No authorised development may commence until a landscaping scheme incorporating a written statement and plans has been submitted to and approved by the relevant planning authority. The landscaping scheme must be substantially in accordance with the illustrative landscaping plan and the illustrative cross sections drawing and must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
 - (b) site restoration cultivation, importing of materials including topsoil and subsoil handling and storage in accordance with BS 3882:2007 and other landscape reinstatement operations in accordance with BS 4428 Code of Practice for general Landscape Operations, and the earthworks specification to ensure plant establishment;
 - (c) proposed finished ground levels;
 - (d) hard surfacing materials;
 - (e) vehicular access, parking and circulation areas;
 - (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
 - (g) an arboricultural method statement including details of existing trees and tree groups identified for retention, management and reinforcement with the type and extent of protection to be in accordance with BS 5837: 2012;
 - (h) implementation timetables for all landscaping works;
 - (i) a 10 metre screening vegetation buffer as shown on the indicative landscaping plan;
 - (j) surface water attenuation pond designed to incorporate native marginal planting;
 - (k) the locations of low fertility (where applicable) for invertebrates; and
 - (l) butterfly bank planting.
- (2) The landscaping works must be carried out in accordance with the approved landscaping scheme.
- (3) The landscaping works must be carried out in accordance with implementation timetables approved under sub-paragraph (1).
- (4) Any tree or shrub planted as part of the approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.
- (5) The landscaping works must be managed and maintained throughout the life of the MEC to ensure the long term adequacy of the approved landscaping scheme.

Construction and Environment Management Plan

5.—(1) No authorised development may commence until a construction and environmental management plan has been submitted to and approved by the relevant planning authority. The construction and environmental management plan must be substantially in accordance with the draft construction environment management plan set out in appendix 17.1 to volume 4 of the environmental statement and must include the following—

- (a) the mechanism for ensuring that all relevant environmental controls and mitigation are incorporated into a construction method statement;
- (b) confirmation that no explosive blasting will be carried out during any demolition;
- (c) environmental objectives and targets;
- (d) environmental monitoring;
- (e) roles and responsibilities;
- (f) means of communication, record keeping, reporting, auditing and review;
- (g) complaints procedures;

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- (h) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, lighting, noise and vibration);
- (i) details of construction lighting to protect potential foraging/commuting features;
- (j) habitats protection measures, including fencing to delineate the Trent and Mersey Canal Local Wildlife Site, protection zones for retained trees and bat roosts, means of escape for badgers and other small mammals;
- (k) measures to minimise the spread of invasive species;
- (l) site waste management plan;
- (m) surface and ground water protection measures (including bunding potential contaminate sources);
- (n) construction drainage strategy;
- (o) pre-construction works otter survey to be undertaken beneath Canal Bridge 101 (Malkin's Bridge);
- (p) methodology for using harvested water where possible;
- (q) ecology, landscape and visual impact mitigation (covering protection of trees to be retained and minimising visual intrusion of construction works); and
- (r) protocol in the event that unexpected contaminated land is identified during ground investigation or construction.

(2) The construction works must be undertaken in accordance with the approved construction environment management plan unless otherwise agreed with the relevant planning authority.

(3) The undertaker may submit for approval by the relevant planning authority a construction and environment management plan for each of numbered work 1, numbered work 2, numbered work 3, numbered work 4, numbered work 5, numbered work 6 and numbered work 7 individually, and, in such a case, only those parts of the authorised development forming the numbered work the subject of the construction and environment management plan may be commenced following the approval of such a construction and environment management plan.

Ground investigation

6.—(1) Numbered work 1 may not commence until an intrusive ground investigation has been undertaken.

(2) A geo-environmental interpretative report detailing all investigative works and sampling undertaken pursuant to this requirement, together with the results of the analysis, risk assessment to any receptors and a proposed remediation strategy (if required) must be submitted to the relevant planning authority for approval prior to any remediation commencing.

(3) If during any works, contamination is encountered which has not previously been identified under sub-paragraph (1) then the additional contamination must be fully assessed and an appropriate remediation scheme submitted to and approved by the relevant planning authority.

(4) Upon completion of the works, a closure report must be submitted to and approved by the relevant planning authority, such closure report to include the following—

- (a) details of the remediation works;
- (b) details of any post remediation sampling and analysis to show the site has reached the required clean-up criteria; and
- (c) any necessary documentation detailing what waste materials have been removed from site.

(5) Any remediation strategy approved under sub-paragraph (2) and any remediation scheme approved under sub-paragraph (3) must be implemented in accordance with the approved details.

Piling

7.—(1) No piling may commence until a piling strategy has been submitted to and approved by the relevant planning authority, such strategy to include a piling risk assessment, the results of such assessment and the piling techniques to be used in carrying out the authorised development.

(2) Piling must be carried out in accordance with an approved strategy under paragraph (1).

Fencing and other means of enclosure

8.—(1) No authorised development may commence until details of the proposed means of enclosure for the authorised development have been submitted to and approved by the relevant planning authority.

(2) Fencing and other means of enclosure must be carried out in accordance with the approved details.

(3) The undertaker may submit for approval by the relevant planning authority details of the proposed means of enclosure for each of numbered work 1E, numbered work 2A, numbered work 2B, numbered work 5A and numbered work 5B individually and, in such a case, only those parts of the authorised development forming the numbered work the subject of the details of the proposed means of enclosure may be commenced following the approval of such details.

Habitat management plan

9.—(1) No authorised development may commence until a written habitat management plan, reflecting the survey results and ecological mitigation and enhancement measures, together with ecological monitoring and management included in the environmental statement, has been submitted to and approved by the relevant planning authority.

(2) The habitat management plan must include an implementation timetable and must be carried out as approved.

(3) The undertaker may submit for approval by the relevant planning authority a written habitat management plan for each of numbered work 1E, numbered work 5B, numbered work 6 and numbered work 7 individually and, in such a case, only those parts of the authorised development forming the numbered work the subject of the written habitat management plan may be commenced following the approval of such a written habitat management plan.

Construction traffic

10.—(1) No authorised development may commence until a construction traffic management plan has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The construction traffic management plan must be substantially in accordance with the draft construction traffic management plan set out in appendix 7.11 to volume 4 of the environmental statement and must include the following—

- (a) details of a plan to encourage car sharing between construction workers travelling to the site;
- (b) construction vehicle routing plans and the reasonable mechanisms to be put in place to enforce compliance;
- (c) details of a HGV vehicle booking management system;
- (d) site access plans and 24 hour access arrangements;
- (e) proposals for the management of junctions to and crossings of highways and other public rights of way;

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- (f) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads together with the staggering of construction workers start and finish times;
 - (g) route assessment is undertaken before abnormal indivisible loads are brought to the site to assess the need for street furniture removal, if required, and its reinstatement and that pre-notification of deliveries involving abnormal indivisible loads and details of where police escorts would be required;
 - (h) proposals for temporary warning signs and banksman and police escort details;
 - (i) details of the on-site parking arrangements for construction plant and vehicles; and
 - (j) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during construction of the authorised development.
- (2) The construction traffic management plan must be implemented as approved.
- (3) The undertaker may submit for approval by the relevant planning authority a construction traffic management plan for and, in such a case, only those parts of the authorised development forming the numbered work the subject of the construction traffic management plan may be commenced following the approval of such a construction traffic management plan.
- (4) During the operation of the generating station no abnormal indivisible loads may be transported into or out of the site without the prior written approval of the relevant planning authority in consultation the relevant highways authority.

Travel plan during operational phase

- 11.**—(1) Prior to the date of final commissioning a written operational travel plan must be submitted to and approved by the relevant planning authority. Such operational travel plan to include—
- (a) objectives and targets; and
 - (b) measures and initiatives to promote sustainable travel.
- (2) The operational travel plan must be carried out as approved.

Construction hours

- 12.**—(1) Construction work for the authorised development must not take place outside the hours of—
- (a) 07:00 to 19:00 on Monday to Friday; and
 - (b) 07:00 to 13:00 Saturdays,

except with the prior written approval of the relevant planning authority.

- (2) Nothing in sub-paragraph (1) precludes a start-up period from 06:30 to 07:00 and a shut-down period from 19:00 to 19:30 on weekdays (excluding public holidays) and start-up period from 06:30 to 07:00 and a shut-down period from 13:00 to 13:30 on Saturdays.

Foul and surface water drainage

- 13.**—(1) Numbered work 1 must not commence until written details of the surface and foul water drainage system and sustainable drainage systems, including the subsequent maintenance and management of the system for the operation of the authorised development has been submitted to and approved by the relevant planning authority. The surface and foul water drainage system must be substantially in accordance with the illustrative foul and surface water drainage strategy plan.

(2) The surface and foul water drainage system for the authorised development must be constructed in accordance with the approved details.

Artificial lighting

14.—(1) Prior to the date of final commissioning written details of the control of artificial lighting during maintenance and operation of the authorised development must be submitted to and approved by the relevant planning authority, such details to include measures to keep external lighting to the minimum necessary for operational safety and security reasons, incorporating cut-offs to reduce light pollution.

(2) The artificial lighting for the authorised development must be implemented in accordance with the approved details.

(3) The undertaker may submit for approval by the relevant planning authority written details of the artificial lighting during maintenance and operation of the authorised development for each of numbered work 1E, numbered work 5A and numbered work 5B individually forming the numbered work the subject of the written details of the control of artificial lighting and, in such a case, only those parts of the authorised development may be commissioned following the approval of such details.

(4) Prior to the date of final commissioning the exhaust gas emission flue stack(s) must be fitted, if reasonably required with infra-red light fitted at the highest practicable point of the structure.

(5) No authorised development may commence until the undertaker has notified the Defence Geographic Centre (or any successor organisation to the same) with the following information—

- (a) precise location of development;
- (b) date of commencement of construction;
- (c) anticipated date of completion of construction;
- (d) the height above ground level of the tallest structure;
- (e) the maximum extension height of any construction equipment; and
- (f) details of aviation warning lighting fitted to the structure(s).

Emergency Access

15. The undertaker must not use the existing closed access (marked N-O on the access and rights of way plan) unless and until an emergency access strategy has been submitted to and approved by relevant planning authority, such strategy to include details of—

- (a) how the existing closed access is to be secured at all times (save in an emergency event as outlined in (b)); and
- (b) how and when the existing closed access may be opened in the event of an emergency.

Bridge plinths

16.—(1) No pipeline support plinths forming numbered work 2B(b)(vi) must be installed on canal bridge 101 (Malkin's Bridge) as marked on the works plans.

(2) The crown of the pipeline over canal bridge 101 must not protrude above the repaired parapet by more than 150mm in height.

(3) Numbered work 2B(c) may not commence until a method statement detailing the extent and nature of the repairs for the parapet of Canal Bridge 101 (Malkin's Bridge) has been submitted to and approved by the relevant planning authority.

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Highway works

17.—(1) For any highway work in a street for which the highway authority is the street authority, prior to the carrying out of any such work authorised pursuant to article 4 (maintenance of authorised development), article 10 (power to alter layout, etc. of streets) or article 11 (street works) of this Order, the undertaker must submit all necessary technical specifications required for that work for the prior approval of the highway authority.

(2) The highway work must be carried out in accordance with the approved technical specification.

Local economic benefit

18.—(1) No part of the authorised development must commence until a scheme for the promotion of local economic benefit from the authorised development in the area of Staffordshire has been submitted to and approved by the relevant planning authority. Such scheme must include—

- (a) a commitment on the undertaker to invite to tender companies with addresses in Staffordshire as the relevant planning authority may notify to the undertaker in writing;
- (b) a methodology for the use of local people and local businesses, where appropriate, in relation to the construction of the authorised development; and
- (c) a strategy for the provision of training opportunities for local companies (who are successful under sub-paragraph (a)) or local people who are employed to work on the authorised development under sub-paragraph (b).

(2) The authorised development must be carried out in accordance with the scheme approved under sub-paragraph (1).

Amendments to approved details

19.—(1) Save in respect of the approved plans specified in requirement 3(1), the undertaker may submit to the relevant planning authority for approval any amendments to the parameters in Tables 2 and 3 of requirement 3(2), plans, drawings, documents, details, schemes, statements or strategies which require approval by the relevant planning authority pursuant to any requirement (the “Approved Plans, Details or Schemes”). Following any such approval by the relevant planning authority the Approved Plans, Details or Schemes are to be taken to include the amendments approved pursuant to this sub-paragraph(1).

(2) Approval under paragraph 19(1) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

Combined heat and power

20.—(1) Prior to the date of final commissioning, a review of potential opportunities for the use of heat from the authorised development must be submitted to and approved by the relevant planning authority.

(2) The review shall provide for the on-going monitoring and full exploration of potential opportunities to use heat from the authorised development and for the provision of subsequent reviews of such opportunities as necessary.

(3) Where viable opportunities for the use of heat are identified, a scheme for the provision of the necessary plant and pipework to the boundary of Work No. 1 shall be submitted to and approved by

the relevant planning authority; any plant and pipework installed up to the boundary of Work No.1 to enable the use of heat shall be installed in accordance with the agreed details.

Decommissioning strategy

21.—(1) Subject to obtaining the necessary consents and unless otherwise agreed with the relevant planning authority, within twenty four months of the Order land ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis), a scheme for the demolition and removal of Work No. 1 must be submitted to the relevant planning authority.

(2) The demolition and removal of Work No. 1 must be implemented in accordance with the approved scheme.

(3) On the one year anniversary of the Order land ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis) the undertaker must notify the relevant planning authority of the same.

Requirements for written approval, etc.

22.—(1) Where under any of the above requirements the approval or agreement of the relevant planning authority or any other party is required, that approval or agreement must be provided in writing.

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

SCHEDULE 3

Articles 8 and 18

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

Compensation enactments

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

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(23) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

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

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

(23) 1973 c.26.

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

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

Application of the 1965 Act

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

- (a) the right acquired or to be acquired;
- (b) the restrictive covenant imposed or to be imposed;
- (c) the land over which the right is or is to be exercisable; or
- (d) the land over which the restrictive covenant is or is to be applied.

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

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

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

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

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

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and

(b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or

(ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Meaford Gas Fired Generating Station Order 2016 (“the Order”) ceases, in relation to that person, to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

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

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

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

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

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

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

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

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

SCHEDULE 4

Article 10

STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

Table 4

<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>
In the Borough of Stafford	Northern Access Road	From line A-B to points C and D as shown on the access and rights of way plan improvements to the existing access (the bellmouth of the Northern Access Road with Meaford Road as shown at line A-B on the access rights of way plan), removal of existing traffic island, improved visibility splays to provide a safer entrance and exit flow and widening and resurfacing of the Northern Access Road

SCHEDULE 5

Article 11

STREETS SUBJECT TO STREET WORKS

Table 5

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of street works</i>
In the Borough of Stafford	Meaford Road	Street works to facilitate the replacement, maintenance and/or refurbishment of the existing surface water drainage pipe in relation to numbered work 6 between lines E-F and G-H as shown on the access rights of way plan

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of street works</i>
In the Borough of Stafford	Northern Access Road	Street works to upgrade the existing access (the bellmouth of the Northern Access Road with Meaford Road as shown between line A-B on the access rights of way plan) and to upgrade and widen the Northern Access Road between line A-B and points C and D on the access rights of way plan

SCHEDULE 6

Article 12

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

Table 6

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
In the Borough of Stafford	Meaford Road	Prohibition/Restriction: Between lines J-K and L-M on the access rights of way plan being approximately 130 metres Purpose of the Prohibition/Restriction: Temporary closure of no more than half the width of Meaford Road at any time in order to carry out numbered work 6
In the Borough of Stafford	Northern Access Road	Prohibition/Restriction: Between line A-B and points C and D on the access rights of way plan. Purpose of the Prohibition/Restriction: Temporary closure of no more than half the width of the Northern Access Road at

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
		any time in order to carry out numbered work 4

SCHEDULE 7

Article 32

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID

Application

1. For the protection of National Grid as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

2. In this Part of this Schedule—

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

“apparatus” means mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“functions” includes powers and duties;

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

“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;

“National Grid” means National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

[“specified work” means so much of any of the authorised development that will or may be situated 15m (measured in any direction) of, or which may affect, any apparatus.]

3. Except for paragraphs 4 (apparatus in streets subject to temporary prohibition or restriction), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity) this Schedule does

not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary prohibition or restriction

4. Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

5.—(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 undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in 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 National Grid as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

Removal of apparatus

6.—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of National Grid 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 National Grid in accordance with sub-paragraphs (3) to (6) inclusive.

(2) As a condition of agreement between the parties in paragraph 6(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the National Grid and the undertaker) 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 National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker 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) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 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 National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (4) afford to

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National Grid to their satisfaction (taking into account paragraph 7(1) below) the necessary facilities and rights for—

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

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

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

(6) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (3) or (4), 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.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to National Grid 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 National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid 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 National Grid 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 shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 36 (arbitration) of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

8.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 6(3) (removal of apparatus) the undertaker must submit to National Grid a plan and seek from National Grid details of the apparatus belonging to or maintained by National Grid.

- (2) The plan to be submitted to National Grid under sub-paragraph (1) must show—
 - (a) the exact position of the works;
 - (b) the level at which these are proposed to be constructed or renewed;
 - (c) the manner of their construction or renewal including details of excavation, positioning of plant;

- (d) the position of all apparatus; and
 - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.
- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.
- (4) Any approval of National Grid 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.
- (5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid 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 undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (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 National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid 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 National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).
- (9) Nothing in this paragraph precludes the undertaker 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 undertaker 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 National Grid 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 National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services" as the same may be replaced from time to time.
- (12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme

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save that National Grid 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 9.

Expenses

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

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6(4) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (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 Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 36 (arbitration) of the Order 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 National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

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

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid 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 National Grid 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

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

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid 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 materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (b) shall be subject to the full terms of this Schedule including this paragraph 10 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

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Enactments and agreements

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

Co-operation

12.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 6(3) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its reasonable 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 National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’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 National Grid, it must not be unreasonably withheld or delayed.

Access

13. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under paragraph 6(3), 6(5), 7(1) and 8 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 36 (arbitration) of the Order.

PART 2

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

15. For the protection of the utility undertakers referred to in this part of this Schedule (save for National Grid which is protected by Part 1 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

16. In this part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(24)), belonging to or maintained by that utility 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;

(24) 1989 c.29.

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- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991⁽²⁵⁾;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

“functions” includes powers and duties;

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

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽²⁶⁾;
 - (g) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

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

18. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

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

20.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has

⁽²⁵⁾ 1991 c.56. Section 51A to the 1991 Act was inserted by section 92(1) of the Water Act 2003(c.37).

⁽²⁶⁾ 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

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been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 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 a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 36 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 36 (arbitration), and after the grant to the utility 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 undertaker to be removed under the provisions of this part of this Schedule.

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

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

21.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 36 (arbitration).

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

22.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 20(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

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

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 15 to 21 apply as if the removal of the apparatus had been required by the undertaker under paragraph 20(2).

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

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

23.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 20(2).

(2) There is to 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 36 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 20(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

24.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 20(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 a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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 a utility undertaker, its officers, servants, contractors or agents.

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

25. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking 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 RAILWAY INTERESTS

26. The following provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 40, any other person on whom rights or obligations are conferred by that paragraph.

27. In this Schedule—

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

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

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993⁽²⁷⁾;

“Network Rail” means Network Rail Infrastructure Limited (registered company no. 2904587) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006⁽²⁸⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

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

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

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

28.—(1) Where under this part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail 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 arising from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

29.—(1) The undertaker must not exercise the powers conferred by article 17 (authority to survey and investigate the land), article 18 (compulsory acquisition of rights), article 22 (acquisition of subsoil or airspace only), article 23 (private rights), article 25 (temporary use of land for carrying out the authorised development), article 29 (felling or lopping of trees) or the powers conferred by section 11(3) of the 1965 Act as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(27) 1993 c. 43.

(28) 2006 c. 46.

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(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers and electronic code communications operators: preliminary notices) or article 26 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail 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 (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case 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.

31.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 30(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 30;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and

- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

(3) Nothing in this part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

32. The undertaker must—

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

33. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail 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.

34.—(1) If any permanent or temporary alterations or additions to railway 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 railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail 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 Network Rail 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 Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 30(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 35(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

35. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

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- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 30(3) or in constructing any protective works under the provisions of paragraph 30(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

36.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 30(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (4)(a), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 30(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably

to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 30(1) has effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised tramway comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 31.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 40(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 35(a) any modifications to Network Rail's apparatus under this paragraph must be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 36 (arbitration) to the Institution of Civil Engineers must be read as a reference to the Institution of Electrical Engineers.

37. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker 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 adversely to affect railway property.

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

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39. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, 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 Network Rail.

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

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

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer must not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

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

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

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

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

(6) In this paragraph—

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

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

41. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this part of this Schedule (including the amount of the relevant costs mentioned in paragraph 40) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this part of this Schedule (including any claim relating to those relevant costs).

42. In the assessment of any sums payable to Network Rail 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 Network Rail if that action or agreement was not reasonably

necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this part of this Schedule or increasing the sums so payable.

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

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

44. Nothing in this Order, or in any enactment incorporated with or applied by this Order, must prejudice or affect the operation of Part I of the Railways Act 1993.

45. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

46. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 33 (certification of plans) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 4

FOR THE PROTECTION OF THE CANAL AND RIVER TRUST

Interpretation

47.—(1) For the protection of the Trust the following provisions of this Part 4 of Schedule 7, have effect unless otherwise agreed in writing between the undertaker and the Trust.

(2) In this Schedule—

“authorised works” means the construction of numbered work 2B as authorised by this Order;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 12 months from the completion of that work,

and “construct” and “constructed” have corresponding meanings;

“detriment” means any material damage to the waterway or any other property of the Trust and, without limitation on the scope of that meaning, includes—

- (c) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

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- (d) 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;
- (e) the deposit of materials or the siltation of the waterway so as to materially damage the waterway;
- (f) the pollution of the waterway;
- (g) any significant alteration in the water level of the waterway, or significant interference with the supply of water to it, or drainage of water from it;
- (h) any material harm to the ecology of the waterway (including any material adverse impact on any site of special scientific interest comprised in the Trust’s network); and
- (i) any interference with the exercise by any person of rights over the Trust’s network;

“the engineer” means an engineer appointed by the Trust for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are to be construed accordingly;

“protective work” means a work constructed under paragraph 52(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“towing path” means the towing path forming part of the waterway;

“the Trust” means the Canal & River Trust;

“the Trust’s network” means the Trust’s network of waterways; and

“the waterway” means the Trent and Mersey Canal, and includes any works, lands or premises belonging to the Trust, or under its management or control, and held or used by the Trust in connection with that waterway only.

Powers requiring Canal & River Trust consent

48.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Trust.

(2) The undertaker must not exercise the powers conferred by article 12 (temporary prohibition or restriction of use of streets) in relation to any way over land comprised in the waterway unless such exercise is with the consent of the Trust.

(3) The undertaker must not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Trust.

(4) The undertaker must not exercise the powers conferred by section 271 of the Town and Country Planning Act 1990, in respect of any right of access to the waterway, unless such exercise is with the consent of the Trust.

(5) The consent of the Trust under sub-paragraphs (1) to (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 16 (discharge of water) may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period; and
- (b) authorising the Trust on giving reasonable notice (except in an emergency, when the 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 Trust.

Vehicles, plant and machinery

49. The undertaker must not use any land or property of the Trust forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer whose consent must not be unreasonably withheld or delayed; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 53 (design of works).

Fencing

50. Where so required by the engineer the undertaker must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may reasonably require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Survey of waterway

51.—(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 must appoint a qualified engineer (“the surveyor”), to be approved by the Trust and must bear the reasonable cost of the carrying out by the surveyor of a topographical survey (including a dip-survey to measure the depth of the waterway) (“the survey”) of so much of the waterway and of 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 must—

- (a) on being given reasonable notice (except in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and to existing works of the undertaker which may provide support for the waterway 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 the surveyor 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 are to 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 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 report of the survey must be provided to both the Trust and the undertaker at no cost to the Trust.

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Approval of plans, protective works etc.

52.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 28 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by the undertaker or by the Trust at the undertaker's request without unnecessary delay and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

(4) The undertaker must pay to the 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 (3), and of carrying out any additional dredging of the waterway necessitated by the exercise of any of the powers of this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving must be set off against any sum payable by the undertaker to the Trust under this paragraph 52.

(5) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Trust may, if it is reasonably required in order to avoid detriment, 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 or make such works and the undertaker must reimburse the Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

53. Without affecting its obligations under the provisions of this part of this Schedule the undertaker must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by the Trust on—

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

and must have regard to such views as may be expressed by the Trust to the extent that these accord with the requirements of the relevant planning authority in response to such consultation pursuant in particular to the requirements imposed on the Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(29) and to the interest of the Trust in preserving and enhancing the environment of its waterways.

(29) 1995 c.i.

Notice of works

54. The undertaker must give to the engineer 28 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 Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Trust's network.

Lighting

55. The undertaker must 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.

Construction of specified works

56.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this part of this Schedule and with any requirements made under paragraph 52(3) (approval of plans) and paragraph 54 (notice of works);
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Trust.

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent passage of any vessel which is of a kind (as to its dimensions) for which the Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(30) to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

Prevention of pollution

57. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of the waterway or the deposit of materials in it and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work: provision of information

58.—(1) The undertaker on being given reasonable notice must—

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

(2) The Trust on being given reasonable notice must—

(30) 1968 c.73.

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- (a) at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Trust under this Schedule during their construction; and
- (b) 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 must reimburse the Trust's reasonable costs in relation to the supply of such information.

Maintenance of works

59. If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives reasonable notice to the undertaker informing it that the state of maintenance of the work appears to the Trust such 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 the work in such state of maintenance as not to cause such detriment and the Trust must afford the undertaker such access as is required in order for the undertaker to carry out any such works.

Repayment of Canal & River Trust fees, etc.

60. The undertaker must repay to the Trust all fees, costs, charges and expenses reasonably incurred by the Trust —

- (a) in constructing any protective works under the provisions of paragraph 52(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Trust's network.

Making good of detriment; compensation etc.

61.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Trust) must make good such detriment and pay to the Trust all reasonable expenses to which the Trust may be put, and compensation for any loss which the Trust may sustain, in making good or otherwise by reason of the detriment.

(2) The undertaker is responsible for and must make good to the Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by the Trust—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a 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 a protective work.

(3) The fact that any act or thing may have been done under the engineer's supervision or in accordance with any directions or awards of an arbitrator does not (if it was done without negligence

on the part of the 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.

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

Arbitration

62. Any difference arising between the undertaker and the Trust under this Schedule (other than a difference as to the meaning or construction of this Schedule) is to be referred to and settled by arbitration in accordance with article 36 (arbitration).

PART 5

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(**(31)**);

“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)(**(32)**) of that code;

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(**(33)**);

“electronic communications code network” means—

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

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

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

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

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

(31) 2003 c.21.

(32) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(33) See section 106.

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the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

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

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 36 (arbitration).

65. 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.

66. 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 6

FOR THE PROTECTION OF SP MANWEB

67. The following provisions of this Schedule have effect for the benefit of SP Manweb, unless otherwise agreed in writing between the undertaker and SP Manweb.

68. Nothing in this Order must prevent SP Manweb from accessing its apparatus known as Tower MW-PK3.

PART 7

FOR THE PROTECTION OF BT GROUP PLC

69.—(1) For the protection of BT Group Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and BT Group Plc.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003⁽³⁴⁾;

“BT apparatus” means all boxes, cables, poles and plant, associated cabling or ducting or such other electronic communications apparatus as is owned by BT Group Plc;

“BT apparatus map” means a map prepared by BT Group Plc showing the location of BT apparatus in or on the Order land;

(34) 2003 c.21.

“BT Group Plc” means British Telecommunications Public Limited Company (Company Registration Number 01800000) whose registered office is at 81 Newgate Street, London, EC1A 7AJ which is an electronic communications code operator;

“Click Before You Dig” means the team within BT Group Plc charged with providing assistance to members of the general public in order to locate BT apparatus on land and includes any successor team within BT Group Plc with the same remit;

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽³⁵⁾;

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

“the highway” includes carriageways, verges, footpaths etc; and

“Network Alterations team” means the team within BT Group Plc charged with carrying out planned diversion and protection works to BT apparatus and includes any successor team within BT Group Plc with the same remit.

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

- (a) any damage is caused to any BT 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 other property of BT Group Plc; or
- (b) there is any interruption in the supply of the service provided by BT Group Plc,

the undertaker must bear and pay the cost reasonably incurred by BT Group Plc in making good such damage or restoring the supply and make reasonable compensation to BT Group Plc for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) BT Group Plc must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker 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.

(4) Any difference arising between the undertaker and BT Group Plc under this part of this Schedule must be referred to and settled by arbitration under article 36 (arbitration).

71. This part of this Schedule does not apply to—

- (a) any BT apparatus in respect of which the relations between the undertaker and BT Group Plc 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.

72. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and BT Group Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

(35) See section 106.

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73. The undertaker must not enter into any underground structures owned by BT Group Plc without authorised BT Group Plc personnel.

74. The undertaker must confirm the location and nature of works arising from the construction of the authorised development which, in the undertaker's reasonable opinion, are likely to affect BT apparatus within or immediately adjacent to the Order land by contacting the Network Alterations team with detailed plans of the works and to check what alterations to BT apparatus (if any) may be required.

75. Prior to any works commencing or the moving of heavy plant or equipment over BT apparatus within or immediately adjacent to the Order land, the undertaker must confirm details of such BT apparatus with a representative from Click Before You Dig who will provide a map(s) showing the location of BT apparatus within or immediately adjacent to the Order land.

76. In the event that any BT apparatus within or immediately adjacent to the Order land is likely to be placed at risk, either temporarily or permanently because of the movement of plant or equipment or both pursuant to the authorised development, the undertaker must contact a Network Alterations team representative.

77. In the event that works undertaken by the undertaker pursuant to the authorised development necessitate a change in level of the frames and covers comprised within BT apparatus, the undertaker must seek consent from a Network Alterations team representative to carry out such works.

78. Where the BT apparatus map(s) show(s) BT apparatus within or immediately adjacent to the Order land, the undertaker must contact Click Before You Dig before commencing works on or moving plant or equipment onto the Order land, to ensure that any sub-surface BT apparatus can be located and marked up by BT Group Plc.

79. Protection measures for BT apparatus within or immediately adjacent to the Order land and which may be affected by the authorised development must be approved in advance by Click Before You Dig. In carrying out the authorised development, the undertaker must take reasonable care in the protection of BT apparatus comprising optical fibre or co-axial cabling or both and use reasonable endeavours to avoid disturbing BT apparatus.

80. Prior written notice must be provided to Click Before You Dig of any excavating or backfilling proposed by the undertaker around BT apparatus, so that BT Group Plc representatives can attend the Order land if necessary. Unless alternative protection is agreed with Click Before You Dig or a Network Alterations team representative in advance, the normal depth of cover for BT apparatus underground of 350mm in footways and 600mm in carriageways must be maintained by the undertaker. Where the undertaker considers that it can not maintain the relevant depth of BT apparatus, the undertaker must provide written notice to Click Before You Dig, and BT Group Plc may, if reasonable in all the circumstances, within 14 days notify the undertaker in writing that it requires the undertaker to divert the BT apparatus at the undertaker's expense.

81. All excavation works undertaken by the undertaker immediately adjacent to BT apparatus within or immediately adjacent to the Order land is to be carried out by hand until the extent and location of the BT apparatus is known. Mechanical borers or excavators or both must not be used within 1 metre of BT Apparatus (2 metres if it is a pole) without the prior approval of a BT Group Plc representative.

82. To prevent any movement of BT apparatus within or immediately adjacent to the Order land during any excavation as part of the construction of the authorised development, structural support is to be used as directed by Click Before You Dig or the Network Alteration team if the excavation is—

- (a) deeper than the immediately adjacent BT apparatus;
- (b) within 1 metre of BT apparatus in stable soil; or
- (c) within 5 metres of BT apparatus in unstable soil.

83. The undertaker must notify Click Before You Dig in advance of carrying out any of the following methods of construction or site preparation as part of the authorised development on or in Order land that is immediately adjacent to BT apparatus or on or in Order land within which there is BT apparatus—

- (a) pile driving within 10 metres of BT apparatus;
- (b) using explosives within 20 metres of BT apparatus; or
- (c) using laser equipment within 10 metres of BT apparatus.

84. The undertaker will keep clear and unobstructed access to BT Group Plc manhole and joint box chambers within the Order land.

85. In the event of any damage to BT apparatus, the undertaker must immediately inform a BT Group Plc representative.

PART 8

FOR THE PROTECTION OF WPD

86. For the protection of WPD referred to in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and WPD.

87.—(1) In this part of this Schedule:-

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

“apparatus” means any conduit overhead lines cables ducts pipes or other apparatus or equipment belonging to or maintained by WPD for the purposes of electricity transmission and its distribution and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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

“specified work” means so much of any of the authorised development that will or may be situated on any land either owned by WPD or in respect of which WPD has an easement or wayleave for its apparatus (save that this shall not include any easement or wayleave for its apparatus arising from the Licence to Retain Assets dated 30 March 1990 between the Central Electricity Generating Board (National Power Division) and the Midlands Electricity Board) or any other interest or to carry out any works within 3 metres of any apparatus;

“WPD” means Western Power Distribution (West Midlands) Plc (Company Registration Number 03600574) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB in its capacity as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

(2) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 of the 1991 Act.

88. Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary prohibition or restriction of use of streets), WPD shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in,

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upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

89. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

90.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that WPD's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of WPD to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of WPD in accordance with subparagraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to WPD 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 WPD reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to WPD 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, WPD must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use all reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 96.

(5) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 96, and after the grant to WPD 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 WPD 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 controlled by the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

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

91.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to WPD 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 must

be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled by arbitration in accordance with paragraph 96.

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

92.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work, the undertaker must submit to WPD a plan, section and description of the works to be executed.

(2) The undertaker shall not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, such approval not to be unreasonably withheld or delayed.

(3) Within a period of 60 days from the date on which a plan, section and description has been received by WPD pursuant to paragraph 93(1), WPD shall advise the undertaker in writing whether any amendments to the plan, section or description of the specified works are reasonably required or whether it reasonably requires any additional measures to be taken by the undertaker to ensure the satisfactory protection of its apparatus or to secure access to it. If by the expiry of the 60 days WPD has not advised the undertaker in writing of its approval or disapproval of the plans, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) Any works to which sub-paragraph (1) applies must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) (as the same may be amended pursuant to sub-paragraph (6)) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by WPD for the protection of the apparatus, or for securing access to it, and WPD is entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker shall comply with WPD's *Avoidance of Danger from Electricity Overhead Lines and Underground Cables* (2014), the Energy Network Associations' *A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines* (undated), the Health and Safety Executive's *GS6 Avoiding danger from overhead power lines* and the Health and Safety Executive's *HSG47 Avoiding danger from underground services* (Third Addition)(2014), as the same may be replaced from time to time.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

93.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work any damage is caused to any apparatus or property of WPD, or there is any interruption in any services provided by WPD, or WPD becomes liable to pay any amount to any third party, the undertaker shall—

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

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- (b) indemnify WPD for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from WPD, by reason or in consequence of any such damage or interruption or WPD becoming liable to any third party as aforesaid.
- (2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—
 - (a) any damage or interruption to the extent that it is attributable to the neglect or default of WPD, its officers, servants, contractors or agents; and
 - (b) any authorised development and/or any other works authorised by this Schedule carried out by WPD as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (b) shall be subject to the full terms of this Schedule including this paragraph 94 in respect of such new apparatus.
- (3) WPD shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering its representations.

94. The undertaker must repay to WPD the reasonable expenses incurred by WPD in, or in connection with, the inspection or protection of any apparatus which may be required pursuant to paragraphs 90(6) or 92(4) of this Part.

95. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and WPD in respect of any apparatus laid or erected in the Order land on the date on which this Order is made.

96.—(1) Subject to paragraph 96(2), any difference or dispute arising between the undertaker and WPD arising out of or in connection with this Schedule shall, unless otherwise agreed in writing between the undertaker and WPD, be referred to and finally resolved by arbitration pursuant to the arbitration rules of the Electricity Arbitration Association in force from time to time. The seat, or legal place, of arbitration shall be London, England.

(2) If any legal proceedings are commenced in a court by a third party against either the undertaker or WPD (the Defendant Contracting Party), the Defendant Contracting Party may seek to bring a claim in those proceedings against the other Party which would otherwise be a claim referable to arbitration by virtue of paragraph 96(1) and the court in which legal proceedings has been commenced may determine such a claim between the undertaker and WPD provided that no arbitration has been commenced between the Parties prior to the commencement of legal proceedings involving the same or substantially the same issues raised by or involved in such a claim.

SCHEDULE 8

Article 35

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

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

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or

(c) such longer period as may be agreed by the undertaker and the relevant authority in writing.

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

Further information

2.—(1) In relation to any part of the application to which this Schedule applies, the relevant authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that it considers such further information to be necessary the relevant authority must, within twenty eight days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant authority does not give such notification within this twenty eight day period it is deemed to have sufficient information to consider the application and thereafter is not entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph 2 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b) and this paragraph 2.

Appeals

3.—(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

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

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any requirement consultee;
- (b) the Secretary of State must appoint a person as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent;
- (c) the relevant authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty six days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within twenty six days of receipt of written representations pursuant to sub-paragraph (c) above; and

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- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within forty days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

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

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within twelve days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant authority and any requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within fourteen days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c) to (e).

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

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

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

(6) The appointed person may take into account written representations that have been sent outside of the relevant time limits but the appointed person must proceed to a decision within the time limits set by this Schedule.

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

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

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 1 (authorised works) of this Order as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

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

(11) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any guidance which may from time to time replace it.

4. In this Schedule—

“relevant authority” means the relevant planning authority, relevant highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought; and

“Secretary of State” means the Secretary of State for Communities and Local Government.

SCHEDULE 9

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 7

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Rail Bridge 104, located to the east of Meaford Business Park, comprising approximately 110.94 sqm of rail bridge and bridge deck	GC3	Temporary use to facilitate construction for numbered work 2B	Numbered work 2B
Canal Bridge 101 (Malkin’s Bridge), located on the Trent and Mersey Canal, located to the east of Meaford Business Park, comprising approximately 52.72sqm of canal bridge and bridge deck	GC5	Temporary use to facilitate construction for numbered work 2B	Numbered work 2B

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Meaford Energy Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station of up to 299 MW. The Order would permit the undertaker to acquire, compulsorily or by agreement, rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 33 of this Order (certification of plans) may be inspected free of charge during working hours at Stafford Borough Council at Civic Centre, Riverside, Stafford ST16 3AQ.

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