



## The Millbrook Power (Gas Fired Power Station) Order

### 3.2 Explanatory Memorandum

Planning Act 2008  
The Infrastructure Planning  
(Applications: Prescribed Forms and Procedure) Regulations 2009

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## MILLBROOK POWER LIMITED

### THE MILLBROOK GAS FIRED GENERATING STATION ORDER 201\*

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## EXPLANATORY MEMORANDUM

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### Introduction

1. This explanatory memorandum has been prepared to explain the purpose and effect of the provisions of the draft Millbrook Gas Fired Generating Station Order 201\* ("**the Order**"), in accordance with regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. This document should be read alongside the Order and the various documents submitted in respect of this application for the Order.
2. This memorandum also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ("**the model provisions**"). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, the Planning Inspectorate Advice Note 13 (Preparation of a draft order granting development consent and explanatory memorandum, April 2012) notes (at page 4) that the Planning Inspectorate finds it helpful to receive a 'track change' version of the draft development consent order, showing the departures from the model provisions. This explanatory memorandum therefore also notes variations from the model provisions. The 'track change' version of the Order compared to the model provisions can be found at Appendix 1 to this document.

### The Purpose of the Order

3. Millbrook Power Limited ("**MPL**") has made an application pursuant to the Planning Act 2008 to the Secretary of State for a development consent order for the construction, operation and maintenance of the Millbrook Power gas fired generating station project (referred to in the Order as "**the authorised development**").
4. The authorised development comprises an onshore electricity generating station in England with a capacity of more than 50MW and therefore it constitutes a nationally significant infrastructure project ("**NSIP**") under section 15(2) of the Planning Act 2008. Accordingly, it requires development consent under section 31 of the Planning Act 2008. Development consent may only be granted by order following an application to the Secretary of State under section 37 of the Planning Act 2008.
5. In accordance with sections 120(3) and 122 of and Schedule 5 to the Planning Act 2008, the Order would, in addition to providing for the construction operation and maintenance of the authorised development, authorise the acquisition of land and rights over land, and the extinguishment or suspension of, or interference with, interests in or rights over land. The Book of Reference (Document Reference 4.3) sets out what land is to be acquired and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Statement of Reasons (Document Reference 4.1) which accompanies the application and which sets out the justification for the acquisition or interference with each relevant plot of land. The plots of land are shown on the Land Plans (Document Reference 2.5).
6. The matters for which development consent is sought under the Order can be summarised as follows:

In Central Bedfordshire:

- 6.1 The **Power Generation Plant** comprises:

6.1.1 a new Power Generation Plant in the form of an open cycle gas turbine (OCGT) peaking power generation station (Work Nos. 1A to 1D in Schedule 1 to the Order) fuelled by natural gas with a rated electrical output of up to 299 MWe. This is the output of the generating station as a whole, measured at the terminals of the generating equipment, The Power Generation Plant comprises:

- (a) generating equipment including one Gas Turbine Generator with one exhaust gas flue stack and Balance of Plant (the "**Generating Equipment**") which are located within the **Generating Equipment Site**.
- (b) an up to 2.2 km access road (the "**Access Road**") running from Green Lane (Work No. 2 in Schedule 1 to the Order) comprising either:
  - (i) Option 2A: a new purpose built road providing access from Green Lane to the Generating Equipment Site of up to 2.2km. Option 2A would only be required to be constructed in the event that the access road comprising numbered work 5A in the Rookery South (Resource Recovery Facility) Order 2011 was not completed prior to commencement of the authorised development; or
  - (ii) Option 2B: a section of road of up to 1.4km in length connecting the access road comprising numbered work 5A in the Rookery South (Resource Recovery Facility) Order 2011 to the Generating Equipment Site. Option 2B would only be required to be constructed in the event numbered work 5A in the Rookery South (Resource Recovery Facility) Order 2011 was completed prior to the commencement of the authorised development;
- (c) a temporary construction compound (numbered work 8) required during construction only (the 'Laydown Area');

6.2 an electrical connection (the **Electrical Connection**, Works No. 5, 6 and 7 in Schedule 1 to the Order) to export electricity from the Generating Equipment to the National Electricity Transmission System ("**NETS**") comprising an underground double circuit Tee-in. This would require one new tower (which will replace an existing tower and be located in the existing Grendon – Sundon transmission route corridor, thereby resulting in no net additional towers). This option would require two sealing end compounds ("**SECs**"), one located on each side of the existing transmission line, and both circuits would then be connected via underground cables approximately 500 m in length to a new substation (the "**Substation**").; and

6.3 a new underground gas pipeline approximately 1.8km in length (the "**Pipeline**") comprising numbered work 4A to bring natural gas to the Generating Equipment from the National Transmission System in Schedule 1 to the Order (the **Gas Connection**) The Gas Connection incorporates an Above Ground Installation (the "**AGI**"), comprising a minimum off-take connection and a pipeline inspection gauge facility (Work No. 3A in Schedule 1 to the Order) together with a new means of access off Houghton Lane and other incidental works (Work No.3B in Schedule 1 to the Order).

- 7. Whilst certain street works are being carried out in the area of Bedford Borough Council, these works do not amount to development and as such Bedford Borough Council is not mentioned in Schedule 1 to the Order.
- 8. A further, more detailed, description of the various elements of the authorised development is provided in Schedule 1 to the Order (and the corresponding section of this Explanatory Memorandum below) and in Section 3 of the Environmental Statement (Document Reference 6.1) which accompanies this application.
- 9. The Power Generation Plant (including the Access Road and the Laydown Area) form an integral part of the nationally significant infrastructure project. The Gas Connection (including the Pipeline and the AGI) and the Electrical Connection constitute associated development within the meaning of section 115 of the 2008 Act.

## Associated development

10. Pursuant to section 115 of the 2008 Act, development consent can be granted for the NSIP and associated development. Associated development is development associated with the NSIP as set out in section 115 of the 2008 Act, and having regard to guidance on associated development issued by the Secretary of State for Communities and Local Government (the "**Guidance**"). The Guidance illustrates the types of development that may qualify as associated development and sets out the defining characteristics of associated development. Associated development must not be an aim in itself. In most cases it is a type normally brought forward with the primary development, and may include measures necessary to mitigate the effects of the primary development or innovative development ideas otherwise fulfilling the principles of the Guidance. It should be proportionate to the nature and scale of the primary development.
11. MPL has considered numbered works 3 to 7 against the policy and criteria in the Guidance. It is clear that all of these numbered works fall within the Guidance and are clearly capable of being granted development consent by the Secretary of State pursuant to section 115.
12. In particular, numbered works 3 to 7 are all:
  - 12.1 directly associated with the NSIP, as they are all required for the construction, maintenance or operation of the generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);
  - 12.2 subordinate to the NSIP - none of them are an aim in themselves (paragraph 5(ii));
  - 12.3 proportionate to the nature and scale of the NSIP (paragraph 5(iv));
  - 12.4 of a nature which is typically brought forward alongside a gas-fired generating station (paragraph 6);
  - 12.5 listed in or analogous to the types of associated development listed in Annexes A and B to the Guidance. Those annexes mention (of relevance to numbered works 3 to 7): – "Electricity networks", "Fuel and pipe-line networks", "Overhead / underground lines", "Substations", "Sealing end compounds" and "Gas pipelines and pressure reduction stations".
13. As the Order seeks to apply and modify statutory provisions, including those relating to the compulsory acquisition of land, the Order has been drafted as a statutory instrument, in accordance with sections 117 and 120 of the Planning Act 2008.

## The Provisions of the Order

14. The Order consists of 43 operative provisions, each referred to as articles, and 12 Schedules.

### Parts 1 (Preliminary) and 2 (Principal Powers)

15. Articles 1 (*Citation and Commencement*) and 2 (*Interpretation*) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect. Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions that are relevant in the context of the authorised development.
16. Article 2 defines 'commencement' to exclude surveys, site investigations, temporary fencing and site notices and a category of works defined as the 'permitted preliminary works' (being the carrying out of the low level restoration scheme drainage works). The definition of 'low level restoration scheme drainage works' refers to a drainage channel of about 375m in length along the southern margin of the limit of deviation for numbered work 1D and forming part of numbered work 1D(e), as set out on Figure 4 of Document Reference 2.3. A drainage channel has already been consented pursuant to planning permission reference number BC/CM/2000/8, however the proposed location for this channel needs to be altered to enable the construction of the proposed Project. Given that the drainage channel has already been consented under permission reference number BC/CM/2000/8 and given that the revised location for the drainage channel shown on Figure 4 is not materially different to that proposed under planning permission reference number BC/CM/2000/8, MPL considers it appropriate to allow for the early completion of this work (without triggering the requirements set out in Schedule 2 of the Order) as part of its programme of works for the

implementation of development pursuant to planning permission reference number BC/CM/2000/8. This will prevent a situation where the drainage channel is constructed pursuant to planning permission BC/CM/2000/8 which then needs to be moved by MPL. A copy of planning permission reference number BC/CM/2000/8 is included as Appendix 2 of the Planning Statement (Document Reference 10.1).

17. As there are no ancillary works included in the Order the authorised development is referred to as such throughout the Order and the concept within the model provisions of an "authorised project" has not been used in the Order (there are however, "ancillary matters" as defined in section 120(4) of the Planning Act 2008 including compulsory purchase powers).
18. Article 2 defines 'Order limits' as the limits shown on the works plans. Article 2 defines 'Order land' as land required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans and described in the book of reference. The Order land does not include all of the Order limits as compulsory acquisition powers and powers of temporary use are not being sought over part of Green Lane and Houghton Lane.
19. Article 3(1) (*Development consent etc. granted by the Order*) grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into numbered works, each of which represents a different part of the authorised development. Article 3(2) requires that the works authorised by the Order are situated within the areas shown on the Works Plans (Document Reference 2.6). This is in order to provide certainty as to what has been consented by the Order. Article 3(3) permits construction within limits of deviation which are also specified on the works plans. Requirement 2 provides for maximum and minimum parameters for certain key elements of the project. This approach, whilst going beyond the model provisions, reflects a standard approach used in orders made under the Transport and Works Act 1992 and in recent development consent orders, including for example, the Progress Power (Gas Fired Power Station) Order 2015 and is appropriate in the current Order as it serves to precisely define the authorised development by reference to the plans, whilst preserving a sensible amount of flexibility in the implementation of the authorised development to allow for slight variances in ground conditions and choice of appropriate equipment and technology. The Environmental Statement accompanying the DCO Application (Document Reference 6.1) has assessed the authorised development within the full envelope provided by the limits of deviation.
20. Article 4 (*Maintenance of authorised development*) provides for the maintenance of the authorised development. Article 4(1) closely reflects the terms of the model provisions. Article 4(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised. A definition of "maintain" has been included so that it is clear what the term involves. The Environmental Statement accompanying the DCO Application (Document Reference 6.1) has assessed maintenance as defined in the Order.
21. Article 5 (*Operation of authorised development*) permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the Planning Act 2008. Article 5(2) specifically preserves the need for any other operational consent that may be needed for the Power Generation Plant in addition to the Order.
22. Article 6 (1) (*Benefit of the Order*) makes clear that it is only the undertaker who may take the benefit of the Order. The "undertaker" is defined in Article 2 as MPL, as promoter of the scheme, and anyone who has the benefit of the Order pursuant to Articles 6 and 7. This definition follows the definition of undertaker in the Wrexham Gas Fired Generating Station Order 2017. Article 6(2) provides that for the numbered works 3A, 5, 6 and 7 the benefit of the Order is for the undertaker and National Grid (as National Grid may be best placed to carry out all or part of those works).. A similar approach regarding the benefit of parts of the Order sitting with two undertakers has been taken in Article 6 of the Meaford Gas Fired Generating Station Order 2016 and Article 6 of Progress Power (Gas Fired Power Station) Order 2015. These precedents are relevant as they relate to projects similar to the Project (i.e. a gas generating station with an electrical connection and a gas connection). The Article refers to both the undertaker and National Grid as it has not yet been determined whether the undertaker or National Grid or both parties will construct parts of the Gas Connection and the Electrical Connection.
23. Article 7 (*Consent to transfer benefit of the Order*) makes detailed provision for the transfer of the benefit of the Order and supplements Article 6(1). Under Article 7(4) the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order but such consent is not

required where (i) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986; or (ii) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant. The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar financial and regulatory standing to MPL so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. Article 7(5) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Articles 7(6) to (8) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 7 of the Wrexham Gas Fired Generating Station Order 2017. Article 7(2) has been amended from the model provisions so that it refers to 'transfer, or grant', which is considered to be more accurate than 'agreement'.

### Part 3 (Streets)

24. Article 8 (*Power to alter layout etc. of streets*) allows the undertaker to alter the layout of a street or carry out any works in the street as are set out in Schedule 3 in the manner specified in Schedule 3. Article 8(2) allows for the alteration of the layout of any street within the Order limits for the purposes of construction, operation or maintenance, subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority. Article 8(5) provides that where the consent from a street authority has been requested pursuant to Article 8(4) then, if the street authority fails to notify its decision within eight weeks (or such longer period as is agreed in writing), consent is deemed to have been given. This wording is being discussed with the Local Authorities (Central Bedfordshire Council and Bedford Borough Council) and will assist the undertaker in keeping the construction period for the authorised development as short as reasonably practicable. Similar wording has been used in other made Orders, including the National Grid (North London Reinforcement Project) Order 2014 and the Hirwaun Generating Station Order 2015 (see Article 8). Wording regarding deemed consent is also included in Articles 11, 15, 17 and 42 and Schedule 12.
25. Article 9 (*Street works*) is a model provision intended to permit in certain streets (as specified in Schedule 4) the carrying out of street works for the purposes of the authorised development. Article 9(3) brings in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street works carried out pursuant to Article 9(1). This provides protection for the street authority for the street in question.
26. Article 10 (*Construction and maintenance of new or altered means of access*) provides that new or altered means of access are to be constructed to the reasonable satisfaction of the street authority and maintained at the expense of the undertaker for a year. Any part of the new or altered means of access which are proposed to be public highway (as set out on the Rights of Way, Streets and Access Plan submitted with the undertakers' application for the Order (Document Reference 2.7)) will then be maintained by the highways authority. Those parts of the new or altered means of access which are not intended to be public highway (such as private accesses which the undertaker is altering or creating and as also set out in the Rights of Way, Streets and Access Plan) will then be maintained by the street authority. Paragraphs (4) and (5) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic.
27. Article 11 (*Temporary prohibition or restriction of use of streets*) is slightly refined from the model provision and provides for the temporary alteration, diversion and prohibition or restriction on the use of streets for the purposes of carrying out the authorised development. Reference to temporary prohibition or restriction of use is a reference to the temporary control of how traffic and non-motorised users (including pedestrians) may use and pass along the streets in question. As per the model provision, this applies generally, and also applies specifically to certain streets which are set out in Schedule 6 to the Order. Article 11(2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in Article 11, to use such a street as a temporary working site. There are consultation requirements before this power can be exercised, in the case of any streets not specified in Schedule 6 the undertaker would need to secure the consent of the street authority prior to prohibiting or restricting use and compensation may be payable in respect of the loss or suspension of private rights of way. Similar wording has been used in other made Orders, including Article 11 of the Wrexham Gas Fired Generating Station Order 2017, Article

12 of the Meaford Gas Fired Generating Station Order 2016, Article 12 of Progress Power (Gas Fired Power Station) Order 2015 and Article 11 of the Hirwaun Generating Station Order 2015.

28. Article 12 (*Stopping up of streets*) is drawn from a model provision and permits the undertaker to stop up the streets specified in Schedule 7. This stopping up can only take place if either the substitute street (also specified in Schedule 7) has been provided to the reasonable satisfaction of the street authority and is open for use or a temporary diversion is in place until the substitute street can be opened.
29. Article 13 (*Access to works*) is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Parts 1 and 2 of Schedule 3. For clarity, temporary and permanent means of access are dealt with separately. Other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the relevant planning authority in consultation with the highway authority.
30. Article 14 (*Agreements with street authorities*) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets, which is common in many similar orders. Similar wording has been used in other made Orders, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.
31. Article 15 (*Traffic regulation*) allows, with the consent of the traffic authority, the undertaker to regulate traffic on roads (defined as a public highway maintained by and at the expense of the traffic authority) to the extent that is necessary for the purposes of or in connection with the construction of the authorised development. The Article gives effect to any prohibition, restriction or other provision made by the undertaker as if it was made by the traffic authority or local authority in whose area the road is situated. The Article is not in the general model provisions but there is a precedent for it in the Wrexham Gas Fired Generating Station Order 2017 (Article 14), which referred in its Explanatory Memorandum to its use in other made orders (including Article 37 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 and Article 38 of the Network Rail (Norton Bridge Areas Improvements) Order 2014). It is considered necessary to ensure that the authorised development can be constructed without unnecessary delay. A provision has been added to provide that consent from the relevant traffic authority is deemed to have been given if that authority fails to notify the undertaker of its decision within eight weeks of the receipt of the application however the Article ensures that the traffic authority is given not less than 4 weeks' notice in writing that the undertaker intends to exercise its power under this Article. This provision is again considered necessary so that there is no delay to implementation of the authorised development.

#### **Part 4 (Supplemental Powers)**

32. Article 16 (*Discharge of water*) is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead.
33. Article 17 (*Authority to survey and investigate the land*) is based on the model provision which allows the undertaker to survey and/or investigate land including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation. The power extends to land "which may be affected by the authorised development" as surveys may need to be undertaken on such land to monitor the impacts of the authorised development (for example noise monitoring at residential receptors). The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development.
34. Article 18 (*Removal of human remains*) is a model provision which provides for the removal of human remains from the Order land and for their reburial in such burial ground or cemetery in which burials



may legally take place as the undertaker thinks suitable for the purpose or for their treatment according to the wishes of any personal representatives or relatives who come forward following the giving of the necessary notices. This article has been included as MPL has not been able to rule out the presence of any human remains within the Order land and is considered necessary so that there is no delay in the implementation of the authorised development.

## **Part 5 (Powers of Acquisition)**

35. Article 19 (*Compulsory acquisition of land*) provides for the compulsory acquisition of such land as is required for the authorised development (or to facilitate the authorised development or is incidental to the authorised development). The Article broadly follows the model provision, reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 23 (*Private rights*). A similar approach was taken in the Wrexham Gas Fired Generating Station Order 2017.
36. Article 20 (*Statutory authority to override easements and other rights*) provides that by virtue of section 158 of the 2008 Act in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that by virtue of section 152 of the 2008 Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in the Wrexham Gas Fired Generating Station Order 2017.
37. Article 21 (*Time limit for exercise of authority to acquire land compulsorily*) is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition. The date of the making of the Order has been used to align with the date from which the undertaker may exercise any powers of compulsory purchase that may be contained within the Order. MPL considers that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in requirement 1 of Schedule 2 of the Order.
38. Article 22 (*Compulsory acquisition of rights etc.*) is based on a model provision and entitles the undertaker to acquire rights over land which may be compulsorily acquired, including rights already in existence, or to create new rights or impose restrictions. The word "existing" has been deleted from the model provision wording in paragraph (3) in order to ensure that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the authorised development is implemented. The article introduces Schedule 8, which amends existing compensation legislation in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction. Schedule 8 does not affect the entitlement to compensation, but generally ensures that the compensation code applies to the compulsory acquisition by the creation of new rights and the imposition of restrictive covenants. The article also provides for the transfer of the power to acquire new rights to a statutory undertaker with the consent of the Secretary of State. This is to allow for the creation of easements in favour of statutory undertakers in respect of their apparatus which would not otherwise be possible as the undertaker does not own the dominant tenement. Wording has been included at paragraph (6) to make clear that legislation governing the compensation for the compulsory purchase of land is to apply in relation to the creation of new rights and the imposition of restrictions.
39. Article 23 (*Private rights*) is based on a model provision and has the effect of extinguishing private rights and restrictions over land where: (1) land is subject to compulsory acquisition; (2) the private right is inconsistent with a right being compulsorily acquired (in this case extinguishment will only be in so far as their continuance would be inconsistent with the exercise of the undertaker's right); and (3) land is owned by the undertaker. The Article also suspends private rights where the private right is inconsistent with a right being compulsorily acquired by the undertaker and also suspends private rights for as long as the undertaker is in temporary possession of land under the Order. The Article departs from the model provision in that it relates to all rights over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation of the Project. The Article follows the approach in Wrexham Gas Fired Generating Station Order 2017. Paragraph (4) limits the scope of the suspension of existing rights where temporary possession of land is taken pursuant to the Order.

40. Article 24 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) is a model provision that applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order and is a model provision. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017A and the Wrexham Gas Fired Generating Station Order 2017.
41. Article 25 (*Acquisition of subsoil only*) permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This article is appropriate in the context of cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. This is a model provision.
42. Article 26 (Application of Part 1 of the Compulsory Purchase Act 1965) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 26 or 27 of this Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017 and the Wrexham Gas Fired Generating Station Order 2017.
43. Article 27 (*Rights under or over streets*) is a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in the Progress Power (Gas Fired Power Station) Order 2015.
44. Article 28 (*Temporary use of land for carrying out the authorised development*) allows the land specified in Schedule 9 to be temporarily used for the carrying out of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions around giving 14 days' notice and restoration of the land following the temporary works. Wording has been added to paragraph 1(a)(ii) in order to allow Article 28 to be applicable in the context of land which may be the subject of compulsory purchase, prior to any such compulsory purchase taking place. New wording has also been added to paragraphs (3) and (4) to take in to account that MPL may, pursuant to Article 28(1)(a)(ii) temporarily use land that it may, eventually, compulsorily acquire. Should MPL compulsorily acquire the land that it is in temporary possession of, then MPL should remain in possession of such land. Wording has therefore been deleted in paragraph (8) to dovetail with the new drafting in paragraph (1). This wording closely follows that included within The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. Wording has been added at paragraph (9) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in the subsoil of any part of the Order land. It has precedent in the Wrexham Gas Fired Generating Station Order 2017.
45. Article 29 (*Temporary use of land for maintaining the authorised development*) provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions around giving 28 days' notice and restoration of the land following the temporary possession. This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land. The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the project is opened for use as this is more appropriate for this type of development. Similar wording has been used in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017. However, in order to be able to carry out the landscaping commitments set out in the landscaping and ecological mitigation and management strategy, the maintenance period has been extended to the period in the strategy approved pursuant to Requirement 3 subject to a maximum of 10 years. A similar provision was included in the North Wales Wind Farm Connection Order 2016.

46. Article 30 (*Statutory undertakers*) provides for the acquisition of land belonging to statutory undertakers within the Order land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. The model provision has been amended so as to allow for the suspension of rights of a statutory undertaker (for example where land is being temporarily used under the terms of the Order) rather than just extinguishment. This power is required over the whole of the Order land and similar wording has been used in made Orders for gas fired generating stations, including the Wrexham Gas Fired Generating Station Order 2017.
47. Article 31 (*Apparatus and rights of statutory undertakers in streets*) makes provision in respect of the apparatus and rights of statutory undertakers in streets which are altered or diverted or where use is temporarily prohibited or restricted under Articles 10 or 11 or where a street is stopped up under Article 12. It is a model provision but has been amended in that paragraph (2) onwards has been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 10 of the Order. For example, paragraph 4 of Part 1 of Schedule 10 deals with access to apparatus located in a street where there is a temporary prohibition or restriction on use under Article 11 and paragraphs 6 and 9 of Part 1 of Schedule 10 deal with the relocation of apparatus and payment of costs.
48. Article 32 (*Recovery of costs of new connections*) provides that persons who have to create a new connection following the exercise of powers under Article 32 may recover the costs of new connections from the undertaker. It is a model provision.

#### **Part 6 (Operations)**

49. Article 33 (*Felling or lopping of trees and removal of hedgerows*) provides that the undertaker may fell or lop or cut back the roots of any tree or shrub within the Order limits to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused. It is a model provision. Paragraph (4) has been included in a departure from the model provisions to permit the removal of any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development. It should be noted that there are no protected trees or important hedgerows located within the Order limits.
50. Article 34 (*Railway undertakings*) is a model provision and has the effect of ensuring that streets which are under the control or management of railway or tramway undertaker or part of a level crossing may not be broken up or opened without the consent of the undertaker.

#### **Part 7 (Miscellaneous and General)**

51. Article 35 (*Application of landlord and tenant law*) is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development.
52. Article 36 (*Cases in which land is to be treated as not being operational land*) is a model provision which has the effect of ensuring that the land on which the authorised development is constructed is not excluded from being "operational land" under the Town and Country Planning Act 1990 by the effect of section 263 of that Act. A similar provision has been included in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.
53. Article 37 (*Defence to proceedings in respect of statutory nuisance*) provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which is an unavoidable consequence of the authorised development. A similar provision has been included in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

54. Article 38 (*Protective provisions*) provides for Schedule 10, which protects the interests of certain statutory undertakers, to have effect.
55. Article 39 (*Modifications to and amendments of statutory provisions*) provides for Schedule 11, which provides for modifications to and amendments of the Rookery South (Resource Recovery Facility) Order 2011. These modifications and amendments are explained further in the section on Schedule 11 below. The modifications are made pursuant to the power contained in s 120(5) Planning Act 2008, which permit in certain circumstances the amendment of “statutory provisions”, defined in s 120(6) as including an instrument made under an Act. The Rookery South (Resource Recovery Facility) Order 2011 is such a statutory instrument, and the amendments fall within the circumstances within which amendments are permitted. They are amendments of provisions which relate to matters for which provision may be made in the order or which it is necessary or expedient to make in connection with this Order, being the means by which conflicts between the works and powers contained within the two development consent orders are to be avoided.
56. Article 40 (*Certification of plans etc.*) is a model provision which provides for the submission of the book of reference, plans and documents referred to in the Order to the Secretary of State in order that they may be certified as being true copies.
57. Article 41 (*Service of notices*) deals with the service of notices pursuant to the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006.
58. Article 42 (*Procedure in relation to certain approvals*) provides a procedure in relation to consents and approvals required pursuant to the Order. It applies to all such consents etc, bar those under requirements in Schedule 2, where a separate more detailed procedure is provided for in Schedule 12. Schedule 12 has been used in various draft development consent orders and can be seen in a similar form in the Wrexham Gas Fired Generating Station Order 2017. It also provides that the procedures set out in Schedule 12 apply to any consent, agreement or refusal which needs to be obtained under the requirements set out in Schedule 2 to the Order. Article 42 clarifies the procedure which applies in respect of these additional consents, including by making clear that the appeals process set out in Schedule 12 applies.
59. Article 43 (*Arbitration*) is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is a model provision.

## Schedules

60. *Schedule 1 (Authorised development)* specifies the authorised development:
- 60.1 *Work Nos. 1A to 1D:* describe the works necessary for the **Generating Equipment** - a simple cycle gas turbine power generation plant with a gross rated electrical output of up to 299 MWe, incorporating one gas turbine generator with an exhaust gas flue stack.
- 60.2 *Work No 2* describes the requirements of Options 2A and 2B which are the two options for providing the integral means of access to the Generating Equipment required together with electricity and telecommunications connections and other services. Option 2A would be constructed in the event that numbered work 5A set out in the Rookery South (Resource Recovery Facility) Order 2011 was not implemented prior to the implementation of the Project. In the event that the undertaker for the Rookery South Resource Recovery Facility constructed numbered work 5A then Option 2B would provide an access road from that numbered work 5A to the site of the Generating Equipment. Only one of either Options 2A or 2B would be implemented.
- 60.3 *Work No. 3:* describes the works necessary for the **Gas Connection**, an associated gas pipeline connection to bring natural gas to the Power Generation Plant from the National Transmission System in the vicinity of the authorised development. In more detail:
- 60.4 *Work No 3A* describes the **AGI** (above ground installation) which comprises a minimum offtake connection (**MOC**) and a pipeline inspection gauge facility (**PIG facility**). The MOC is a National Grid facility which contains the equipment required safely to operate a connection to the National Transmission System. This MOC generally contains the tie-in to the NTS along

- with a control and instrumentation kiosk, an electrical supply kiosk and a remotely operable valve allowing control of the gas supply to the downstream works (the downstream works in this instance being the Power Generation Plant).
- 60.5 *Work No 3A* also comprises a PIG launching facility which is a compound which houses a connection to a pressure vessel which allows for inline inspection of a stretch of buried pipeline. The launching facility is matched at the other end of the pipeline by a Receiving facility (as part of *Work No. 1B*).
- 60.6 The underground pipeline itself (the **Pipeline**) is described in *Work No.4A* along with associated telemetry cabling and related works. *Work No 4B* describes the associated construction laydown area and site and welfare offices and workshops.
- 60.7 *Work No 3B* describes the necessary access works to allow a construction and operational access to the AGI to be delivered together with electricity and telecommunications connections and other services.
- 60.8 *Work Nos. 5, 6 and 7:* describe the components of the associated **Electrical Connection** to export electricity from the Power Generation Plant to the NETS. In more detail:
- 60.9 *Work No 5* describes the new 400kV **Substation** required as well as related site works. A substation can either be an air insulated substation (AIS) or a gas insulated substation (GIS). MPL considers that a Substation with AIS technology is appropriate and acceptable in the location (within Rookery South Pit). The Substation would be approximately 200 m x 150 m.
- 60.10 *Work No 6* describes the underground cable connection from the Substation to the existing 400KV overhead transmission line. Two Sealing End Compounds are required and provide the location at which an electrical circuit can make the transition from being carried overhead via a system of towers and wires (an overhead line) to being carried underground through an underground cable. The Sealing End Compounds contain the terminations from the underground cable, an overhead line tower and the connections between them.
- 60.11 *Work No 7* describes the temporary diversion works that would need to be undertaken by National Grid in order to deliver *Work Nos 5 and 6*. These temporary diversion works are anticipated to take no longer than six months.
- 60.12 *Work No. 8* describes the integral construction laydown area that will include hardstanding, site and welfare facilities.
61. *Schedule 2 (Requirements)* sets out the requirements which apply to the carrying out of and operation of the authorised development under the Order. They broadly follow those set out in the model provisions, where relevant, and where they have been amended this has been done following discussions with the relevant planning authority and/or other statutory consultees. The requirements closely relate to the mitigation set out in the Environmental Statement (Document Reference 6.1).
- 61.1 Requirement 1: requires that the authorised development is commenced within five years from the Order having been made. This broadly follows the model provision.
- 61.2 Requirement 2: requirement 2(1) sets out a list of plans in accordance with which the authorised development must be carried out. The requirement also notes that any documents approved pursuant to the requirements themselves will need to be complied with. This is more robust wording than that used in the model provisions but carries the model provision principle through. Requirement 2(2) sets out parameters for key elements of the authorised development and such parameters have been assessed within the Environmental Statement submitted with the application. Requirement 2(3) stipulates that to the extent that design principles for any numbered work are set out in the design principles statement located within the Design and Access Statement (Document Reference 10.2), that numbered work must be designed substantially in accordance with the relevant principle. Requirement 2(4) requires details of the layout, scale and appearance of key numbered works to be submitted and approved by the relevant planning authority prior to work commencing on that numbered work (insofar as not already approved under requirement 5 which provides for approval of new highway accesses).

- 61.3 Requirement 3 and Requirement 4: secure the landscaping and ecological mitigation proposals set out in the Environmental Statement (Document Reference 6.1) through the submission of a written strategy (containing certain specified details in relation to hard and soft landscaping works and ecological mitigation measures) in respect of numbered works 1, 2, 3A, 4, 5, 6 and 7 for the approval of the relevant planning authority. The strategy that is submitted for approval must be substantially in accordance with the outline landscape and ecological mitigation strategy appended to the Environmental Statement (Appendix 11.4 of Document Reference 6.2. Requirement 4 deals with the implementation and maintenance of landscaping and ecological mitigation measures and requires all landscaping works and ecological mitigation measures to be carried out in accordance with the strategy approved pursuant to requirement 3.
- 61.4 Requirement 5: provides that numbered work 1 of the authorised development may not commence until either the Rookery South access road and Option 2B or Option 2A has been constructed to a standard suitable for construction (so as to enable the carrying out of the construction phase of the authorised development).
- 61.5 Requirement 5(2) secures the submission to the relevant planning authority (in consultation with the highway authority) of the details of siting, design and layout of any new or modified accesses being created onto the highway as a result of the authorised development. Such works have to be carried out in accordance with the approved details. This follows the principle of the model provision except that it clarifies that where the details have already been provided as part of the application for this Order, they do not need to be provided again. Requirement 5(4) has been included at the request of the relevant planning authority and secures that the visibility splay at the entrance to the Access Road by Green Lane is kept clear during operation. It is only relevant in the event that Option 2A is constructed as, if the access road pursuant to the Rookery South (Resource Recovery Facility) Order 2011 is constructed at any point then the design for and requirements relating to that road will be implemented.
- 61.6 Requirement 6: secures the submission of details to the relevant planning authority for approval for all proposed permanent and temporary enclosures relating to numbered works 1, 3A, 4, 5, 6 and 7. Once approved, the details are to be implemented. This requirement broadly follows the model provision.
- 61.7 Requirement 7: requires that prior to the commencement of works 1, 2, 3A, 5 and 6, written details of the surface and foul water drainage strategy for the construction and operational phases of the authorised development have been submitted to and approved by the relevant planning authority. The Requirement secures that the surface and foul water drainage system is to be constructed prior to the commencement of the operational phase of that part of the authorised development.
- 61.8 Requirement 8: requires that none of numbered works 1 to 8 may commence until a scheme for that numbered work to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved in writing by the relevant planning authority. The Requirement details that the scheme must include an investigation and assessment report prepared by a specialist consultant approved by the relevant planning authority to identify the extent of any contamination and the remedial measure required. Remediation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by the relevant planning authority. The requirement also secures that ground conditions and stability and foundation design measures are taken into account in the scheme.
- 61.9 Requirement 9: is derived from a model provision and requires that none of numbered works 3A, 4A, 6 and 7(a) may commence until a written scheme of archaeological investigation has been submitted to and approved by the local planning authority. The Requirement specifies particular provisions that must be made in the written scheme of archaeological investigation and specifies that the investigation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by the relevant planning authority. This requirement has been worded to reflect discussions with the relevant planning authority.
- 61.10 Requirement 10: is not a model provision, although it does incorporate several separate provisions. The requirement secures the submission for approval by the relevant planning authority of a construction environment management plan (CEMP). The final construction

environment management plan must be substantially in accordance with the outline construction environment management plan appended to the Environmental Statement (Appendix 3.2 of Document Reference 6.2). The requirement also specifies particular measures that the final CEMP must contain. All construction works are required to be undertaken in accordance with the approved CEMP.

- 61.11 Requirement 11: requires a construction traffic management plan be submitted prior to the commencement of numbered works 1 to 8. This plan must be substantially in accordance with the outline plan that is appended to the Environmental Statement (Appendix 12.4 of Document Reference 6.2).
- 61.12 Requirement 12: requires that prior to final commissioning a noise scheme providing for the control of noise during operation must be submitted to and approved by the relevant planning authority.
- 61.13 Requirement 13: is based on a model provision and specifies the days on which and hours within which (provision for start up and shut down is made) construction works and the delivery and removal of materials can take place. The requirement does not prevent the undertaker from undertaking these works outside the specified hours but this can only be done with the prior, written approval of the relevant planning authority.
- 61.14 Requirement 14: is based on a model provision and requires the submission of a written scheme for the management and mitigation of artificial light emissions for numbered works 1, 3A and 5 for the approval of the relevant planning authority. The written scheme must be substantially in accordance with the outline lighting strategy. The approved scheme must be implemented and maintained during the operation of the relevant numbered work.
- 61.15 Requirement 15: requires the submission to and approval by the relevant planning authority of a written construction worker travel plan prior to the date of commencement of any numbered work. The construction worker travel plan submitted for approval must be substantially in accordance with certain measures in the travel plan that is appended to the Environmental Statement (Appendix 12.2 of Document Reference 6.2) (save for measures which relate to the operational phase). The construction worker travel plan must be carried out as approved.
- 61.16 Requirement 16: requires the submission to and approval by the relevant planning authority of a written operational travel plan prior to the date of final commissioning. The operational travel plan submitted for approval must be substantially in accordance with the outline measures to proposed sustainable transport during the operational phase set out in the travel plan. The operational travel plan must be carried out as approved.
- 61.17 Requirement 17: specifies that in any calendar year the operation of the gas turbine generators comprised in numbered work 1A shall not exceed 2,250 hours in total, provided that the five year rolling average does not exceed 1,500 hours per calendar year. The undertaker must submit a written report to the relevant planning authority within 3 months of the end of each calendar year detailing the total number of hours that the gas turbine generators have operated for.
- 61.18 Requirement 18: details that within 24 months of the Order land ceasing to be used for the purposes of electricity generation, a scheme for the demolition and removal of numbered work 1 must be submitted to the relevant planning authority for approval. Demolition and removal of numbered work 1 must be implemented in accordance with the approved scheme. Paragraph (3) of this Requirement specifies that on the one year anniversary of the Order land ceasing to be used for the purposes of the electricity generation, the undertaker must notify the relevant planning authority of the same.
- 61.19 Requirement 19: is based on a model provision and allows the relevant planning authority to approve amendments to details or plans already specified or approved. This is to allow flexibility, however this flexibility is given strict parameters in that it only applies to the extent assessed in the Environmental Statement (Document Reference 6.1). A similar Requirement appeared in the Progress Power (Gas Fired Power Station) Order 2015.
- 61.20 Requirement 20: sets out that in complying with an article under the Order or a requirement pursuant to Schedule 2, the undertaker shall not be in breach of any condition contained in the

permitted low level restoration scheme for Rookery South Pit (reference number BC/CM/2000/8).

62. *Schedule 3 (Streets subject to permanent and temporary alteration of layout)* sets out the streets to be permanently altered (Part 1) or temporarily altered (Part 2).
63. *Schedule 4 (Streets subject to street works)* sets out the streets that would be subject to street works (including reference to the relevant plan, the location and the specific street).
64. *Schedule 5 (Access)* sets out those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively) and those parts of works to restore temporary accesses that are to be maintained by the street authority (Part 3) which are referred to in Article 11 of the Order.
65. *Schedule 6 (Temporary prohibition or restriction of the use of streets)* sets out the streets that will be subject to a temporary prohibition or restriction on the use of that street (including reference to the relevant plan, the location and the extent of the temporary prohibition or restriction on use).
66. *Schedule 7 (Streets to be stopped up for which a substitute is to be provided)* sets out the street that will be subject to a permanent stopping up, contingent on the provision of a substitute street (including reference to the relevant plan, the location and the extent of the stopping up and the location and extent of the substitute street).
67. *Schedule 8 (Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions)* modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965, in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction.
68. *Schedule 9 (Land of which temporary possession may be taken)* sets out the land temporary possession of which may be taken pursuant to Article 28. It also makes clear the purpose for which such temporary possession may be taken.
69. *Schedule 10 (Protective provisions)* includes draft protective provisions. Part 1 of Schedule 10 protects electricity licence holders, gas transporters and sewerage undertakers (save for National Grid which is protected by Part 3, Eastern Power Networks plc which is protected by Part 4, Anglian Water which is protected by Part 5 and Covanta Rookery South Limited ("**Covanta**") which is protected by Part 6). Part 2 protects operators of electronic communications code networks.
70. In relation to Part 4, Eastern Power Networks plc has confirmed that it agrees to the protective provisions as set out in that part and a side agreement is in an agreed form and expected to be completed soon.
71. In relation to Part 6, MPL is engaging with Covanta to discuss and seek to agree these protective provisions. The interaction between the Rookery South (Resource Recovery Facility) Order 2011 and the authorised development is more fully described in the Planning Statement (Document Reference 10.1). In essence, in order to ensure that both the authorised development and the Rookery South Resource Recovery Facility are able to comfortably co-exist, the protective provisions in Part 6 place obligations on to MPL regarding:
  - 71.1 consultation with Covanta as to the location of the Access Road in the event that MPL implements the authorised development first;
  - 71.2 consultation with Covanta regarding the location of landscape planting in the event that MPL implements the authorised development first;
  - 71.3 consultation with Covanta before exercising any power under the Order to carry out street works or temporarily stop up any street located within the limits of deviation set out in the Rookery South (Resource Recovery Facility) Order 2011; and
  - 71.4 co-operation between MPL and Covanta and their contractors in order to ensure that access is provided to both projects during construction and operation and that the parties work together to discuss construction programming and works where required.



72. *Schedule 11 (Modifications to and amendments of the Rookery South (Resource Recovery Facility) Order 2011)* comprises an amendment to Article 33 of the Rookery South (Resource Recovery Facility) Order 2011 to also refer to MPL (in addition to Network Rail) and the inclusion in Schedule 7 of a Part 2, which contains protective provisions to govern the interaction between the authorised development and the development authorised by the Rookery South (Resource Recovery Facility) Order 2011. The proposed modifications and amendments to the Rookery South (Resource Recovery Facility) Order 2011 have been drafted with the sole aim of ensuring that the Rookery South (Resource Recovery Facility) Order 2011 remains certain in its effect, notwithstanding the provisions of MPL's proposed Order.
73. In the same way that the Rookery South (Resource Recovery Facility) Order 2011 contains protective provisions for the benefit of statutory undertaker Network Rail, MPL proposes to modify the Rookery South (Resource Recovery Facility) Order 2011 to protect MPL as a prospective statutory undertaker. These protective provisions would broadly do the following:
- 73.1 ensure that the rights of way extinguishment powers set out in the Rookery South (Resource Recovery Facility) Order 2011 cannot be used in the context of the authorised development unless otherwise agreed with MPL;
  - 73.2 ensure that the statutory powers set out in the Rookery South (Resource Recovery Facility) Order 2011 cannot be used in the context of the authorised development unless otherwise agreed with MPL;
  - 73.3 require co-operation between MPL and Covanta and their contractors in order to ensure that access is provided to both projects during construction and operation and that the parties work together to discuss construction programming and works where required; and
  - 73.4 provide that Covanta would not be in breach of any planning condition or requirement if, in the event that the authorised development were commenced, the MPL protective provisions prevented Covanta from complying with such condition or requirement.
74. Clauses such as that at paragraph 25 of the protective provisions requiring the consent of another party or undertaker prior to the exercise of powers are commonplace in protective provisions. The Rookery South (Resource Recovery Facility) Order 2011 already contains such a provision for the benefit of Network Rail (see paragraph 4 of Schedule 7). The Rookery South (Resource Recovery Facility) Order 2011 contains an arbitration provision (Article 34), which applies to "Any difference under any provision of this Order, unless otherwise provided for...". Therefore the arbitration of any differences under paragraph 25 of the protective provisions is provided for.
75. In addition, it is proposed that protective provisions in favour of MPL would ensure that both the powers to extinguish private rights and powers of temporary possession for maintenance conferred by the Rookery South (Resource Recovery Facility) Order 2011 could not be exercised in respect of land on which the authorised development is permitted unless agreed with MPL. This is to ensure that it is clear on the face of the Order that any overlap between the two projects has been satisfactorily addressed, and further to provide certainty that the MPL works will not be compromised in the event that the powers conferred by the Rookery South (Resource Recovery Facility) Order 2011 are exercised.
76. MPL considers that it is appropriate for the protective provisions in Schedule 11 to contain provision such as that in paragraphs 27 and 28, deeming Covanta not to be in breach of any requirements of the Rookery South (Resource Recovery Facility) Order 2011 in specified circumstances and providing a defence to criminal proceedings under s.161 of the Planning Act 2008. The provisions ensure that Covanta is not put in difficulties as a result of what would otherwise be breaches of requirements, through no fault of its own.
77. The provisions serve related but separate purposes: paragraph 27 mitigates the risk of any non-criminal proceedings (for example, for injunctive relief) being brought in respect of any breach of the requirements, whilst paragraph 28 provides a defence to criminal proceedings. As such, both are necessary.
78. Whilst there are no precedent provisions in development consent orders modifying earlier instruments (because no order has yet sought to modify an earlier instrument), provisions either deeming a person to have authority or to have complied with a particular requirements placed upon them, or dealing with

defences to offences, are commonplace in law more generally. Examples in statute include s.158 (1) & (2) of the Planning Act 2008 and s.48(2) of the Water Resources Act 1991.

79. Closely comparable to the provision proposed in this case is the defence set out in Regulation 40(1) of the Environmental Permitting Regulations 2016. It is noted that this provision is contained in a statutory instrument rather than primary legislation.
80. The specific power to include drafting such as that in paragraphs 27 and 28 in a development consent order derives from the wide powers conferred by section 120 of the Planning Act 2008. Section 120(5)(a) empowers an application to “apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order”. By inserting a new Part into the existing protective provisions secured by the Rookery South Order, MPL is modifying a statutory provision which plainly relates to a matter for which provision may be in the order (i.e. the protection of third party interests as referred to in paragraph 10 of Part 1 to Schedule 5 of the Planning Act 2008).
81. Section 120 of the Planning Act 2008 does not make express provision as to how pre-existing statutory provisions may be modified. MPL considers that the scope of the power to modify includes an ability to modify pre-existing statutory provisions in a way that would have been acceptable at the time the Rookery South (Resource Recovery Facility) Order 2011 was made. This includes adding new provisions that would have fallen within the scope of the original order such as “the imposition or exclusion of obligations or liability in respect of acts or omissions” pursuant to s.120(3) and (4) and paragraph 11 of Part 1 of Schedule 5 to the Planning Act 2008. MPL therefore considers that the provisions at paragraph 27 and 28 of Schedule 11 to the Order are appropriate.
82. By using the Order to modify the Rookery South (Resource Recovery Facility) Order 2011, MPL ensures that in the event that the authorised development is not consented, the Rookery South (Resource Recovery Facility) Order 2011 would not be modified unnecessarily.
83. *Schedule 12 (Procedure for discharge of requirements)* provides a clear procedure for the discharge of requirements by the relevant planning authority. It sets out clear time limits for decisions to be made within (the deemed consent provision is being discussed with the relevant planning authorities on the basis that paragraph (1)(1)(c) allows for the parties to agree an extension to the eight week period, in writing) and makes provision for appeals to be made in the event of a refusal of an application in relation to a requirement or if the relevant planning authority requires further information to be provided in relation to that application.

**APPENDIX 1**

**MARK-UP OF THE PROPOSED ORDER AGAINST THE MODEL PROVISION**

**SCHEDULE 1**

**~~GENERAL MODEL PROVISIONS~~**

**Article 2**

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STATUTORY INSTRUMENTS

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201\* No.

INFRASTRUCTURE PLANNING

The Millbrook Gas Fired Generating Station Order 201[\*]

Made - - - - - [\*\*\*] 201\*

Coming into force - - - [\*\*\*] 201\*

CONTENTS

PART 1

PRELIMINARY

1. Citation and commencement

~~1~~ 2.

Interpretation

PART 2

PRINCIPAL POWERS

~~2~~ 3.

Development consent etc. granted by the Order

~~3~~ 4.

Maintenance of authorised ~~project~~ development

5. Operation of authorised development

~~4~~ 6.

Benefit of this Order

~~5~~ 7.

Consent to transfer benefit of ~~Order~~ the Order

PART 3

STREETS

8. Power to alter layout etc. of streets

~~6~~ Application and modification of legislative provisions

~~7~~ Defence to proceedings in respect of statutory nuisance

~~8~~ 9.

Street works

~~9~~ Stopping up of streets

10. Construction and maintenance of new or altered means of access

~~10~~ Public rights of way

~~11~~ Temporary stopping up 11.

Temporary prohibition or restriction of use of streets

12. Stopping up of Streets

~~12~~ 13.

~~13~~ 14.

15. Traffic Regulation

Access to works  
Agreements with street authorities

PART 4  
SUPPLEMENTAL POWERS

~~14~~ 16.

~~15~~ ~~Protective work to buildings~~

~~16~~ 17.

~~17~~ 18.

Discharge of water  
Authority to survey and investigate the land  
Removal of human remains

PART 5  
POWERS OF ACQUISITION

~~18~~ 19.

~~19~~ ~~Compulsory acquisition of land—incorporation of the mineral code~~

20. Statutory authority to override easements and other rights

~~20~~ 21.

~~21~~ 22.

~~23.~~ Private rights

~~22~~ ~~Private rights of way~~

~~23~~ 24.

~~24~~ 25.

~~25~~ ~~Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~

26. Application of Part 1 of the Compulsory Purchase Act 1965

~~26~~ ~~Acquisition of part of certain properties~~

~~27~~ 27.

~~28~~ 28.

~~29~~ 29.

~~30~~ ~~Special category land~~

~~31~~ 30.

~~32~~ 31.

~~33~~ 32.

Compulsory acquisition of land  
Time limit for exercise of authority to acquire land compulsorily  
Compulsory acquisition of rights etc.  
Application of the Compulsory Purchase (Vesting Declarations) Act 1981  
Acquisition of subsoil only  
Rights under or over streets  
Temporary use of land for carrying out the authorised project development  
Temporary use of land for maintaining the authorised project development  
Statutory undertakers  
Apparatus and rights of statutory undertakers in ~~stopped-up~~ streets  
Recovery of costs of new connections

PART 6  
OPERATIONS

33. Felling or lopping of trees and removal of hedgerows

~~34~~ 34.

Railway and navigation undertakings

PART 7  
MISCELLANEOUS AND GENERAL

~~35~~ 35.

~~36~~ ~~Operational land for purposes of the 1990 Act~~

Application of landlord and tenant law

<del>37</del>	<del>Deemed consent under section 34 of the Coast Protection Act 1949</del>	
<del>38</del>	<del>Deemed licence under Part 2 of the Food and Environment Protection Act 1985</del>	
<del>39</del>	<del>Felling or lopping of trees</del>	
<del>40</del>	<del>Trees subject to tree preservation orders</del>	
36.	<a href="#">Cases in which land is to be treated as not being operational land</a>	
37.	<a href="#">Defence to proceedings in respect of statutory nuisance</a>	
38.	<a href="#">Protective provisions</a>	
39.	<a href="#">Modifications to and amendments of statutory provisions</a>	
<del>41</del>	<del>40.</del>	Certification of plans etc.
41.	<a href="#">Service of notices</a>	
42.	<a href="#">Procedure in relation to certain approvals</a>	
<del>42</del>	<del>43.</del>	Arbitration

~~Schedule A--Authorised Project~~

~~Part 1--Authorised Development~~

~~Part 2--Ancillary Works~~

~~Schedule B--Streets Subject to Street Works~~

~~Schedule C--Streets to be Stopped Up~~

~~Part 1--Streets for which a Substitute is to be Provided~~

~~Part 2--Streets for which No Substitute is to be Provided~~

~~Schedule D--Streets to be Temporarily Stopped Up~~

~~Schedule E--Access to Works~~

~~Schedule F--Land of which Only Subsoil More than 9 Metres Beneath Surface may be Acquired~~

~~Schedule G--Land of which Temporary Possession may be Taken~~

~~Schedule H--Deemed Consent Under Coast Protection Act 1949~~

~~Schedule I--Deemed Licence Under the Food and Environment Protection Act 1985~~

~~Schedule J--Trees Subject to Tree Preservation Orders~~

**Interpretation**

4

~~(1) In this Order--~~

~~[SCHEDULE 1 — AUTHORISED DEVELOPMENT](#)~~

~~[SCHEDULE 2 — REQUIREMENTS](#)~~

~~[SCHEDULE 3 — STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT](#)~~

~~[PART 1 — PERMANENT ALTERATION OF LAYOUT](#)~~

~~[PART 2 — TEMPORARY ALTERATION OF LAYOUT](#)~~

- SCHEDULE 4 — STREETS SUBJECT TO STREET WORKS
- SCHEDULE 5 — ACCESS
  - PART 1 — THOSE PARTS OF THE ACCESSES TO BE MAINTAINED AT THE PUBLIC EXPENSE
  - PART 2 — THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY
  - PART 3 — THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY
- SCHEDULE 6 — TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS
- SCHEDULE 7 — STREETS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED
- SCHEDULE 8 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIONS
- SCHEDULE 9 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 10 — PROTECTIVE PROVISIONS
  - PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
  - PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
  - PART 3 — FOR THE PROTECTION OF NATIONAL GRID
  - PART 4 — FOR THE PROTECTION OF EPN
  - PART 5 — FOR THE PROTECTION OF ANGLIAN WATER
  - PART 6 — FOR THE PROTECTION OF NETWORK RAIL
  - PART 7 — FOR THE PROTECTION OF COVANTA ROOKERY SOUTH LIMITED
- SCHEDULE 11 — MODIFICATIONS TO AND AMENDMENTS OF THE ROOKERY SOUTH (RESOURCE RECOVERY FACILITY) ORDER 2011
- SCHEDULE 12 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

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

The application has been examined by a [single appointed person] appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(b). The [single appointed person] has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act(c).

The Secretary of State, has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 3

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

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

(c) 2008 c.29. Section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of section 25(20) to the Localism Act 2011 (c.20).

of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(a) 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.

In accordance with section 127 of the 2008 Act (b), the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115, and 120 of the 2008 Act, makes the following Order—

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(a) S.I. 2009/2263. Regulation 3 was amended by S.I. 2012/635 and S.I. 2012/787. S.I. 2009/2263 was revoked by S.I. 2017/572, but continues to apply to this application for development consent by virtue of transitional provisions contained in Regulation 37(2) of that instrument.

(b) 2008( c.29). Section 127 was amended by sections 23, (2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013 (c.27) and by paragraphs 64(1) and (2) of Schedule 13(1) and paragraph 1 of Schedule 25 to the Localism Act 2011 (c.20).



# PART 1

## PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Millbrook Gas Fired Generating Station Order 201\* and comes into force on [X] 201[X].

### Interpretation

2.—(1) In this Order—

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

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

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- (a) 1961 c.33. Section 1 was amended by paragraphs 37(a) and (b) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Sections 2 and 3 were repealed by paragraph 38 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 4 was amended by paragraphs 39(a), (b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307. There are other amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c.56. Section 1 was amended by part 1 of Schedule 6 and paragraph 14(2) of Schedule 4 to the Acquisition of Land Act 1981, section 4 of and paragraph 13(1)(a) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11), and paragraph 1 of Schedule 10 to the Courts Act 2003, (c.39); Sections 2, 7, 9, 14, 21, 22, 24, 26, 28 and 30, paragraph 2 of Schedule 2 and paragraphs 2(3) and 7(2) of Schedule 4 were amended by section 9(3) and paragraph 5 of Schedule 3 to the Gas Act 1986 (c.44), section 245(4) of the Town and Country Planning Act 1990 (c.8), section 151(5) of and paragraph 2(1) of Schedule 18 to the Water Act 1989 (c.15), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 (c.57), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 30(1) of the Acquisition of Land Act 1981 (c.67) and section 129 of the Local Government Act 1972 (c.70), sections 39 and 40 and paragraphs 11(1) to Schedule 5 and paragraph 1 to Schedule 4 of the Forestry Act 1967 (c.10), section 49(7)(i) of the Agriculture Act 1967 (c.22), section 15 of the Greater London Council (General Powers) Act 1967 (c.xx), and section 60(1) of the Post Office Act 1969 (c.48), sections 120(3), 124(2) and 273(1) of the Local Government Act 1972 (c.70), article 4 of S.I. 1978/829, article 3 of S.I. 1978/1125 and Part I of Schedule 6 to the New Towns Act 1981 (c.64), with section 129 words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 (c.62); Sections 2, 7, 9, 14, 21, 22, 26, 28 and 32 were amended by sections 120(3), 124(2), and 273(1) of the Local Government Act 1972 (c.70), article 4 of S.I. 1978/829, article 3 of S.I. 1978/1125, Schedule 6 Part I of the New Towns Act 1981 (c.64), sections 6, 37(4)(5), 38, and paragraphs 2(2) and 15(9) of Schedule 2 and paragraphs 3(1), 5(1) and 8 of Schedule 5 to the Channel Tunnel Act 1987 (c.53), sections 2(2), and paragraph 1 of Schedule 2 Part II and paragraph 1(8) of Schedule 3 to the Dartford-Thurrock Crossing Act 1988 (c.20), section 10(1) and paragraph 6 of Schedule 3 Part I to the Electricity Act 1989 (c.29), sections 151(5), 151(6), 155(3)–(7) of and paragraphs 2(2)(3)–(8) of Schedule 18 and paragraphs 6(1)(a) of Schedule 20 to the Water Act 1989 (c.15), section 10(1) of and paragraphs 7–13 of Schedule 3 Part I to the Electricity Act 1989 (c.29), and extended by paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 (c.12); Section 3 was amended by paragraph 3 of Schedule 15(1) to the Planning and Compensation Act 1991 (c.34); Section 4 was amended by s182(1) of the Housing and Planning Act 2016 (c.22); Section 4A was inserted by s202(1) of the Housing and Planning Act 2016 (c.22); Section 5 was amended by section 65 of the Planning and Compensation Act 1991 (c.34) and paragraph 60 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 6 was amended by paragraph 61 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 7 was also extended by section 237(4)(a) of the Town and Country Planning Act 1990 (c.8), and by section 78(2)(a), and paragraph 5(4) of Schedule 10 to the Housing Act 1988 (c.50); Section 8 was amended by paragraphs 62(b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraph 2 of Schedule 17(1) to the Housing and Planning Act 2016 (c.22); Section 9 was also amended by section 1(1) of and Schedule 1 to the Statute Law (Repeals) Act 1973 (c.39), section 52(10)(a) of the Land Compensation Act 1973 (c.26), section 13(3) and paragraphs 4 and 5 to Schedule 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c. 34), section 146(1) of the Town and Country Planning Act (c.8) and by section 54(7) of the Land Compensation Act (c.26); Section 10 was amended by paragraph 63 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraphs 13(2)(a) and (b) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11); Section 11 was amended by s186(2)(a)(i), s186(2)(a)(ii), s186(2) (b), s187(2), s188 and paragraph 6 of Schedule 14 to the Housing and Planning Act 2016 (c.22), paragraphs 14(3)(a) and (b) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1, and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 11A was added by s186(3) of the Housing and Planning Act 2016 (c.22); Section 11B was added by s187(3) of the Housing and Planning Act 2016 (c.22); Section 12(6) was amended by paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c.22); Section 13 was amended by section 139 (5), (6), (7), (8), (9), paragraph 28(2) of Schedule 13 and paragraph 1 of Schedule 23(3) to the Tribunals, Courts and Enforcement Act 2007 (c. 15); Section 15 was amended by paragraph 65 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 16 was amended by paragraph 66 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous

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

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

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Amendments) Order 2009/1307; Section 17 was amended by paragraph 67 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 18 was amended by paragraph 68 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 19 was amended by paragraph 69 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 20 was amended by paragraph 4 of Schedule 15(I) to the Planning and Compensation Act 1991 (c. 34) and paragraph 70 of Schedule 1 to the Transfer of Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 22 was also modified by paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), and excluded by section 10(3) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66); Section 23 was amended by paragraph 4(1) of Schedule 11(2) to the Constitutional Reform Act 2005 c.4; Section 24 was also amended by s17(2)(3) and Schedule 2 to the Rentcharges Act 1977 (c.30); Section 25 was amended by paragraph 4(1) of Schedule 11(2) to the Constitutional Reform Act 2005 c.4. and s1(1) and Part IX of Schedule 1 to the Statute Law (Repeals) Act (c.39); Section 26 was also amended by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34); Section 27 was repealed by article 3 and Schedule 1 to S.I. 1990/776; Section 29 was repealed by paragraph 1 of Schedule 23(3) to the Courts and Enforcement Act 2007 (c.15); Section 30 was also amended by section 34(1) and paragraph 14(4) of Schedule 4 to the Acquisition of Land Act 1981 (c.67); Section 31 was amended by s34(1) and paragraph 14(5) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 19(b) of Schedule 15(II) to the Planning and Compensation Act 1991 (c.34) and paragraph 12(2) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1; Section 32 was also amended by section 34(1), and paragraph 14(6) of Schedule 4 to the Acquisition of Land Act 1981 (c.67); Paragraph 10 of Schedule 1 was amended by Schedule 9(3), Schedule 3 Part II paragraph 5 of the Gas Act 1986 (c.44), sections 10 and 14(4) of the Land Commission Act 1967 (c. 1), section 28(4) and Schedule 3 paragraph 3 of the Courts Act 1971 (c. 23), sections 47(6) and 52(2) of the Highways Act 1971 (c. 41), section 10(1) and Schedule 3 paragraphs 6-13 of the Electricity Act 1989 (c.29), section 78(2)(b) and Schedule 10 Part III paragraph 20-23 of the Housing Act 1988 (c.50), section 578 of the Housing Act 1985 (c.68), section 37(4) of the Land Drainage Act 1976 (c. 70), sections 6(2)(4)(6)(7) and 27, Schedule 4 Part II and Schedule 7 paragraph 5(5) of the Development of Rural Wales Act 1976 (c.75), article 4 of S.I. 1978/268, section 250 and Schedule 19 of the Highways Act 1980 (c.66), section 245(4) of the Town and Country Planning Act 1990 (c. 8), section 151(5) and Schedule 18 paragraph 2(1) (with sections 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Schedule 26 paragraphs 3(1)(2), 17, 40(4), 57(6), 58) of the Water Act 1989 (c.15), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 (c.57), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 30(1) of the Acquisition of Land Act 1981 (c.67), and section 129 of the Local Government Act 1972 (c. 70) Words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 (c. 62) and modified by section 13(3), Schedule 3 paragraphs 4 and 5 of Agriculture (Miscellaneous Provisions) Act 1968 (c. 34); Paragraph 2 of Schedule 2 was modified by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c. 34), section 10(2) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), paragraph 14 of Schedule 3A to the Town and Country Planning Act 1968 (c. 72) and Schedule 2, Appendix A to the Land Commission (Dissolution) Act 1971 (c. 18); Paragraph 13 of Schedule 2A was amended by paragraph 3 of Schedule 17(1) to the Housing and Planning Act 2016 (c.22). There are other amendments to the 1965 Act which are not relevant to this Order.

(a) 1980 c.66. Section 328 was amended by sections 27, 28 and 54 of , and paragraphs 1(2) of Part I and 1(2) of Part III of Schedule 2 to the Town and Country Planning Act 1990 (c.8), by sections 3 and 19 of, and paragraph 9 of Schedule 3 to the Dartford-Thurrock Crossing Act 1988 (c.20), s35, and by paragraphs 7(1) and 10(1) of Schedule 4 to the Channel Tunnel Act 1987 (c.53), and extended by sections 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1) of, and paragraph 1(2)(xxv)(8) of Schedule 25 and paragraphs 3(1)(2), 17, 40(4), 57(6), and 58 of Schedule 26 to the Water Act 1989 (c.15), and by s112(1)(3) of, and paragraph 2(4)(d)(6)(9) of Schedule 16, paragraphs 33 and 35(1) of Schedule 17 to the Electricity Act 1989 (c.29), and by s67(1)(3) of, and paragraph 2(1)(x1) of Schedule 7 and paragraph 33 of Schedule 8 to, the Gas Act 1986 (c.44). There are other amendments to the 1980 Act which are not relevant to this Order.

(b) 1984 c.27.

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

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

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

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(a) 1990 c.8. Section 106 was amended by section 12(1) of the Planning and Compensation Act 1991 (c.34), paragraphs 3(2) and 3(3) of Schedule 2 to the Growth and Infrastructure Act 2013 (c. 27), sections 33(2), 33(3), 33(4) and 34(5) of the Greater London Authority Act 2007 (c. 24), and by sections 174(2)(a), 174(2)(b) and 174(2)(c) of the Planning Act 2008 (c. 29); Section 264 was amended by paragraph 54 of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c. 60), paragraph 9 of Schedule 3(1) to the British Waterways Board (Transfer of Functions) Order 2012/1659, paragraph 14 of Schedule 1(1) to the Transport for London (Consequential Provisions) Order 2003/1615, paragraphs 20(a) and 20(b) of Schedule 12 to the Localism Act 2011 (c. 20), paragraph 18 of Schedule 4(2) to the Infrastructure Act 2015 (c. 7), and by paragraph 13(a)(i) of Schedule 1(III) to the Transport Act 2000 (Consequential Amendments) Order 2011/4050. There are other amendments to the 1990 Act which are not relevant to this order.

(b) 1991 c.22. Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26); Section 49 was amended by paragraphs 117(a) and 117(b) of Schedule 1(2) to the Infrastructure Act 2015 (c.7); Section 50 was amended by section 124(3) of the Local Transport Act 2008 (c.26); Section 51 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 54 was amended by the transitional provisions specified in article 6(1)-(3) and (5) of SI 2007/3174 and by section 49(1) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c. 18); Section 55 was amended by section 51(9) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18), and subject to transitional provisions specified in article 6(4) and (5) of SI 2007/3174 by section 49(2) of the Traffic Management Act 2004 (c.18); Section 56 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c. 18), and wording was amended subject to transitional provisions specified in article 5 of SI 2007/3174 by section 43 of the Traffic Management Act 2004 (c.18); Section 56A was inserted subject to transitional provisions specified in article 4 of SI 2007/1890 and article 5 of SI 2007/3174 by Section 44 of the Traffic Management Act 2004 (c.18); Section 57 was amended by section 52(3) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c. 18); Section 58 was amended subject to transitional provisions specified in article 7 of SI 2007/3174 and article 6 of SI 2007/1890 by the Traffic Management Act 2004 (c.18) and amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 58A was inserted subject to transitional provisions specified in article 7 in SI 2007/1890 and article 8 in 2007/3174 by section 52(1) of the Traffic Management Act 2004 (c.18); Section 59 was amended by section 42 of Traffic Management Act 2004 (c.18); Section 60 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 63 was amended by paragraph 118 of Schedule 1(2) to the Infrastructure Act 2015 (c.7); Section 64 was amended by section 52(4) of the Traffic Management Act 2004 (c. 18) and by paragraph 12 of Schedule 7 to the Road Traffic Act 1991 (c.40); Section 65 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 66 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 67 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 68 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 69 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 70 was amended subject to transitional provisions specified in article 9 in SI 2007/3174 by section 54 of the Traffic Management Act 2004 (c.18) by section 40(3) of that same Act, and by regulation 17(2) of Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007/1951; Section 71 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 73F was added by section 59 of Traffic Management Act 2004 (c.18); Section 74 was amended by sections 256(2), (3)(a), (3)(b), (4), (5), (6) and (7) of the Transport Act 2000 (c.38), sections 40(4) and 52(5) of the Traffic Management Act 2004 (c.18) and by paragraph 119 of Schedule 1(2) to the Infrastructure Act 2005 (c.7); Section 74A was amended by section 255(1) of the Transport Act 2000 (c.38), section 40(4) of the Traffic Management Act 2004 (c.18) and by paragraphs 120(2) and 120(3) of Schedule 1(2) to the Infrastructure Act 2015 (c.7); Section 74B was amended by section 255(1) of the Transport Act 2000 (c.38); Section 79 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 83 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 86 was added by paragraph 121 of Schedule 1(2) to the Infrastructure Act 2015 (c.7); Section 88 was amended by sections 52(6) and 40(5) of the Traffic Management Act 2004 (c.18); Section 89 was amended by section 52(7) of the Traffic Management Act 2004 (c.18) and by paragraph 57(1) of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60); Section 92 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 93 was amended by section 49(3) of the Traffic Management Act 2004 (c.18); Section 95A was inserted subject to transitional provisions specified in article 3 of SI 2007/1890 and article 3 of SI 2007/3174 by section 41(1) of the Traffic Management Act 2004 (c.18); Section 106 was amended by section 41(2) of the Traffic Management Act 2004 (c.18) and by paragraph 122 of Schedule 1(2) of the Infrastructure Act 2015 (c.7). There are other amendments to the 1991 Act which are not relevant to this Order.

(c) 2008 c.29. Section 14 was amended by article 2(2) of the Infrastructure Planning (Waste Water Transfer and Storage) Order 2012/1645 and by articles 2(2)(a) and 2(2)(b) of the Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015/949; Section 74 was amended by Localism Act 2011 (c. 20) Schedule 25(20) paragraph 1 and Localism Act 2011 (c. 20) Schedule 13(1) paragraph 29(3); Section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of section 25(20) to the Localism Act 2011 (c.20); Section 103 was amended by paragraph 48(4) of Schedule 13(1) and paragraph 1 of Schedule 25(20) to the Localism Act 2011 (c.20); Section 104 was amended by paragraphs 49(2),(3)(a),(3)(b), (3)(c), (4), (5)(a), (5)(b), (6) and (7) of Schedule 13(1) to the Localism Act 2011 (c.20), and by section 58(5) of the Marine and Coastal Access Act 2009 (c.23); Section 114 was amended by paragraphs 55(2)(a), (2)(b) and (3) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 115 was amended by paragraph 1 of Schedule 25(20) to the Localism Act 2011 (c.20), sections 160(2), (3), (4), (5), and (6) of the Housing and Planning Act 2016 (c.22); Section 120 was amended by section 140 and paragraph 60(2) and (3) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 122 was amended by paragraph 62 of Schedule 13(1) to the Localism Act 2011 (c.20); Section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016 (c.22); Section 127 was amended by section 23(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013, (c. 27) and by paragraph 64(2) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 134 was amended by 142(2)(a) and (3) and paragraph 1 of Schedule 25(21) to the Localism Act 2011 (c.20), and paragraphs 6(1)(a) and 6(1)(b) of Schedule 1 to the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017/16; Section 138 was amended by sections 23(4)(a), 23(4)(b) and 23(4)(c) of the Growth of Infrastructure Act 2013 (c.27); Section 152 was amended by paragraph 293

“the access road visibility splay” means the visibility splay shown hatched in purple on the access road visibility splay plan with drawing reference 31116/2001/011 contained in the outline construction traffic management plan which is contained in appendix 12.4 of the environmental statement;

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

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

~~“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not development within the meaning of section 32 of the 2008 Act;~~

“authorised development” means the development ~~and associated development~~ described in ~~Part 1 of~~ Schedule ~~A-1~~ (authorised ~~project~~development) ~~[and any other development authorised by this Order]~~, which is development within the meaning of section 32 of the 2008 Act;

~~“the authorised project” means the authorised development and the ancillary works authorised by this Order;~~

~~“the book of reference” means the book of reference certified by the decision-maker~~  
“book of reference” means the book of reference with submission document reference number 4.3 and which is 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;~~

~~“the decision-maker” has the same meaning as in section 103 of the 2008 Act;~~

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

“commence” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements or the permitted preliminary works and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

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

“design principles statement” means the design principles statement contained within the design and access statement at section 4.2 submitted under regulation 5(2)(q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as such by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

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of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 161 was amended by paragraph 4(3) of Schedule 8(1) to the Marine and Coastal Access Act 2009 (c.23) and by paragraphs 41(3)(a) and 41(3)(b) of Schedule 4(1) to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664.

(b) by other means but while in electronic form;

~~"the land plan" means the plan certified as the land plan by the decision maker~~ "the environmental statement" means the environmental statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and which is certified as such by the Secretary of State for the purposes of this Order;

"exhaust gas emission flue stack" means the exhaust gas emission flue stack including ancillary support structures, sound proof cladding, and emissions monitoring platforms;

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

"gas turbine generator" means one gas turbine which drives a single electricity generator for the purposes of generating electricity including air inlet filter house, air inlet duct, exhaust diffuser, and auxiliaries such as lube oil system, air dryers, fuel gas filter package, instrument air system and compressor washing;

"gross rated electrical output" means the aggregate of gross electrical power as measured at the terminals of the generator in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2016;

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

"land plans" means the plans with submission document reference number 2.5 and which are certified as the land plans by the Secretary of State for the purposes of this Order;

"limits of deviation" means, in respect of numbered works 1A, 1B, 1C, 1D, 2A, 2B, 3A, 3B, 4A, 4B, 5, 6, 7, and 8 the outer limits of the corresponding numbered area shown on the works plans;

"low level restoration scheme agricultural track" means an access track into Rookery South Pit from Green Lane which is in part existing and in part to be constructed in accordance with the permitted low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8);

"low level restoration scheme drainage strategy" means the drainage strategy to be approved pursuant to condition 8 of the permitted low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8);

"low level restoration scheme drainage works" means the construction of a drainage channel approximately 375m in length along the southern margin of the limit of deviation for numbered works 1D and forming part of numbered work 1D(e) as shown on Figure 4 of Document Reference 2.3;

"low level restoration scheme secondary access track" means an access track into Rookery South Pit from Station Lane which is to be constructed in accordance with the permitted low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8);

"maintain" includes to the extent assessed in the environmental statement inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development and "maintenance" and "maintaining" are to be construed accordingly;

"National Grid" means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH and/or National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH as the context requires;

~~"Order land" means the land shown on the land plan which is within the limits of land to be acquired~~ "Order land" means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans and described in the book of reference;

~~the~~ "Order limits" means the limits shown on the works plan within which the authorised project may be carried out; plans;

"outline construction environment management plan" means the outline construction environment management plan contained in appendix 3.2 of the environmental statement;

“outline construction traffic management plan” means the outline construction traffic management plan contained in appendix 12.4 of the environmental statement;

“outline landscape and ecological mitigation and management strategy” means the outline landscape and ecological mitigation strategy contained in appendix 11.3 of the environmental statement;

“outline lighting strategy” means the outline lighting strategy contained in appendix 11.4 of the environmental statement;

“outline travel plan” means the outline travel plan contained in appendix 12.2 of the environmental statement;

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

“permitted preliminary works” means the carrying out of the low level restoration scheme drainage works;

“Millbrook Power Limited” means Millbrook Power Limited (Company No. 08920458) whose registered office is at Drax Power Station, Drax, Selby, North Yorkshire YO58 8PH;

“relevant planning authority” means Central Bedfordshire Council in relation to land in its area and Bedford Borough Council in relation to land in its area, and “the relevant planning authorities” means both of them;

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

~~(i) — the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) — a National Park Authority;~~

~~(iii) — the Broads Authority; and~~

~~(iv) — the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~“rights of way, streets and access plan” means the plan with submission document reference number 2.7 and which is certified as the rights of way, streets and access plan by the decision-maker Secretary of State for the purposes of this Order;~~

~~“the sections” means the sections shown on the plan certified as the section drawings plan by the decision-maker for the purposes of this Order;~~

“Rookery South access road” means the access road comprising numbered work 5A pursuant to The Rookery South (Resource Recovery Facility) Order 2011(b);

“statutory undertaker” means any person falling within section 127(8), ~~128(5) or 129(2)~~ of the 2008 Act;

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

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

(b) S.I. 2013/680.

~~"tree preservation order" has the meaning given in section 198 of the 1990 Act;~~

~~the "tribunal"~~ means the Lands Chamber of the Upper Tribunal;

"undertaker" means ~~the Millbrook Power Limited or any other~~ person who for the time being has the benefit of this Order in accordance with ~~section 156 of the 2008 Act~~ articles 6 and 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; and

~~the "works planplans"~~ means the plan-plans with submission document reference number 2.6 and which is certified as the works plan-plans by the ~~decision-maker~~ Secretary of State for the purposes of this Order.

(2) (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 restrictive covenants over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

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

*~~[NOTE: In the case of off-shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body as the relevant planning authority.]~~*

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

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference to numbered work 1 means 1A to 1D (inclusive), a reference to numbered work 2 means whichever of options 2A or 2B is implemented by the undertaker, a reference to numbered work 3 means 3A and 3B (inclusive), and a reference to numbered work 4 means 4A and 4B (inclusive). References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the rights of way, streets and access plan.

(6) The expression "includes" is to be construed without limitation.

(7) References to any statutory body include that body's successor bodies as from time to time have jurisdiction over the authorised development.

## PART 2

### PRINCIPAL POWERS

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

**2**

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

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

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

## Maintenance of authorised ~~project~~development

~~3~~

~~4.—(1)~~ The undertaker may at any time maintain the authorised ~~project,~~development except to the extent that this Order or an agreement made under this Order, ~~provides otherwise.~~

~~(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 use and operate the generating station comprised in the authorised development.

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

## Benefit of this Order

~~4~~

~~6.—(1)~~ Subject to paragraph (2) and article ~~5-7~~ (consent to transfer benefit of the Order), the provisions of ~~articles [ ] and [ ] [specify relevant articles]~~ shall this Order have effect solely for the benefit of ~~[specify person, body or class of person]~~the undertaker.

~~(2) Paragraph (1) does not apply to numbered works 3A, 5, 6 and 7 for which development consent is granted by this Order for the benefit of the undertaker and National Grid.~~

~~[NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2) of the 2008 Act).]~~

## Consent to transfer benefit of ~~Order~~the Order

~~7.—(1)~~ Subject to paragraph (4), the undertaker may—

~~5~~

~~(1) —The undertaker may, with the consent of the [specify person or body]-~~

~~(a) (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 in writing between the undertaker and the transferee; or~~

~~(b) (b) —grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.~~

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

~~(3) (3) —The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be 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.~~

~~(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(a) or section 7 of the Gas Act 1986(b); 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 all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state —

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations ~~as would apply under this Order if those benefits or rights were exercised by the undertaker that~~ will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph 7(6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

## PART 3

### STREETS

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

8.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 3 (permanent alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 3 (temporary alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating and

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(a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), sections 89(3), 136(1), 136(2), 145(5), 145(6), and 145(7), and paragraph 5 of Schedule 19 and paragraph 1 of Schedule 23(1) to the Energy Act 2004 (c.20), articles 6(2)(a), 6(2)(b), 6(3), 6(4) of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012/2400, regulation 19 of the Electricity and Gas (Internal Markets) Regulations 2011/2704, and by paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c.27).

(b) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by sections 3(2) and 76 of and paragraph 4 of schedule 6 and paragraph 1 of schedule 8 to the Utilities Act 2000 (c.27), regulation 18(2) of the Electricity and Gas (Internal Markets) Regulations 2011/2704, section 149(5) of the Energy Act 2004 (c.20), and regulation 18 of the Electricity and Gas (Internal Markets) Regulations 2011/2704.

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;
- (b) make and maintain passing place(s).

(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.

(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 (or such longer period as may be agreed with the undertaker in writing), that street authority 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.

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

#### **6**

~~(1) Subject to the modifications set out in paragraph (2) the following provisions of the [insert short title of the relevant Act] shall be incorporated in this Order—~~

- ~~(a) section[s] X [specify relevant section(s)].~~

~~(2) The modifications are: [insert relevant modifications].~~

~~(3) In construing the [insert short title of the relevant Act] as incorporated the following expressions shall have the following meanings: [insert relevant expressions and definitions]~~

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

#### **7**

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

- ~~(a) the defendant shows that the nuisance—~~

- ~~(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or~~

- ~~(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or~~

- ~~(b) the defendant shows that the nuisance—~~

~~(i) — relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or~~

~~(ii) — is a consequence of the use of the authorised project and that it cannot reasonably be avoided.~~

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

## Street works

### 8

~~9.(1) — (1) The undertaker may, for the purposes of the authorised project development, enter on so much of any of the streets specified in Schedule B-4 (streets subject to street works) as is within the Order limits and may —~~

~~(a) (a) — break up or open the street, or any sewer, drain or tunnel under it;~~

~~(b) (b) — drill, tunnel or bore under the street;~~

~~(c) (c) — place and keep apparatus in the street;~~

~~(d) (d) — maintain apparatus in the street or change its position; and~~

~~(e) (e) — execute any works required for or incidental to any works referred to in subparagraphs (a), (b), (c) and (d).~~

~~(2) (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) (3) — The 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.~~

~~[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]~~

## Stopping up of streets

### 9

## Construction and maintenance of new or altered means of access

10.—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (Access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12

months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (Access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 8(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 (Access) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

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

(5) For the purposes of a defence under paragraph (4), a court is, in particular, to have regard to the following matters—

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

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

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

11.—(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.

(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 columns (1) and (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 paragraph (4) without first consulting the street authority; and
  - (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.
- (6) If a street authority fails to notify the undertaker of its decision within 8 weeks of receiving an application for consent under paragraph (5)(b) (or such longer period as may be agreed with the undertaker in writing) that street authority is deemed to have granted consent.

### Stopping up of Streets

~~12. (1)~~ (1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised ~~project~~development, stop up each of the streets specified in columns (1) and (2) of ~~Parts 1 and 2 of~~ Schedule ~~C-7~~ (streets to be stopped up for which a substitute is to be provided) to the extent specified, by reference to the letters and numbers shown on the ~~works~~rights of way, streets and access plan, in column (3) of those Parts of that Schedule.

~~(2) (2)~~—No street specified in columns (1) and (2) of ~~Part 1 of~~ Schedule ~~C-7~~ (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- ~~(a) (a)~~—the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- ~~(b) (b)~~—a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

~~(3) —No street specified in columns (1) and (2) of Part 2 of Schedule C (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.~~

~~(4) —The condition referred to in paragraph (3) is that—~~

- ~~(a) —the undertaker is in possession of the land; or~~
- ~~(b) —there is no right of access to the land from the street concerned; or~~
- ~~(c) —there is reasonably convenient access to the land otherwise than from the street concerned; or~~
- ~~(d) —the owners and occupiers of the land have agreed to the stopping up.~~

~~(3) (5)~~—Where a street has been stopped up under this ~~article~~article—

- ~~(a) (a)~~—all rights of way over or along the street so stopped up shall be extinguished; and
- ~~(b) (b)~~—the undertaker may appropriate and use for the purposes of the authorised ~~project~~development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

~~(4) (6)~~—Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

~~(5) (7)~~—This article is subject to article ~~32-31~~31 (apparatus ~~etc~~and rights of statutory undertakers ~~); in streets~~).

## **Public rights of way**

### **10**

(1) ~~With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the public right of way (being a [insert one of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.~~

(2) ~~With effect from [that same date] [insert later date] an alternative section of [insert description of right of way of that same type] as marked in [green] between the points [C] and [D] on the rights plan is created.~~

(3) ~~In this article--~~

~~"implementation plan" means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and~~

~~"local highway authority" has the same meaning as in section 329(1) of the 1980 Act.~~

## **Temporary stopping up of streets**

### **11**

(1) ~~The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time--~~

~~(a) divert the traffic from the street; and~~

~~(b) subject to paragraph (2), prevent all persons from passing along the street.~~

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

~~(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.~~

~~(4) The undertaker shall not temporarily stop up, alter or divert--~~

~~(a) any street specified as mentioned in paragraph (3) 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.~~

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

## Access to works

### 12

- 13.—(1) The undertaker may, for the purposes of the authorised ~~project—development—~~
- (a) ~~(a)~~—form and ~~lay out~~ layout the permanent means of access, or improve existing means of access, in the ~~location—locations~~ specified in ~~columns (1) and (2) Part 1 of Schedule E—3 (access to works); and~~ streets subject to permanent and temporary alteration of layout);
  - (b) ~~form and layout the temporary means of access in the locations specified in Part 2 of Schedule 3 (streets subject to permanent and temporary alteration of layout); and~~
  - (c) ~~(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 ~~project~~development.

## Agreements with street authorities

### 13

14. ~~(1)~~—(1) A street authority and the undertaker may enter into agreements with respect ~~to—~~
- (a) ~~(a)~~—the construction of any new street including any structure carrying the street ~~over or under a [insert description of development] authorised by this Order;~~
  - (b) ~~the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;~~
  - (c) ~~(b)~~—the maintenance of the structure of any bridge or tunnel carrying a street ~~over or under a [insert description of development];~~
  - (d) ~~(c)~~—any ~~stopping up, alteration or,~~ diversion, prohibition or restriction in the use of a street authorised by this Order; or
  - (e) ~~(d)~~—the carrying out in the street of any of the works referred to in article ~~8(1) (street works)~~ 10(1) (construction and maintenance of new or altered means of access).
- (2) ~~(2)~~—Such an agreement may, without prejudice to the generality of paragraph ~~(1) ~~(1)~~~~
- (a) ~~(a)~~—make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) ~~(b)~~—include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) ~~(c)~~—contain such terms as to payment and otherwise as the parties consider appropriate.

## Traffic Regulation

15.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction of the authorised development or any other development necessary for the authorised development that takes place within the Order land, 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 under 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 11 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)(a).

(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.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

#### **14**

~~16.(1)~~ ~~—(1)~~ The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised **project 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) (2)~~—Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) ~~shall~~ must be determined as if it were a dispute under section 106 of the Water Industry Act 1991-~~(b)~~ (right to communicate with public sewers).

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

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

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

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

(b) 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).



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

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

~~(5)~~ ~~(6)~~—~~The undertaker shall~~ The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

~~(7)—This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991 (offences of polluting water).~~

~~(8)—In this article—~~

~~(6)~~ This article does not authorise any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016(a).

(7) In this article—

(a) ~~(a)~~—“public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964-~~(b)~~ (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)~~ ~~(b)~~—other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991-~~(c)~~ have the same meaning as in that Act.

## **Protective work to buildings**

### **15**

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

~~(2)—Protective works may be carried out—~~

~~(a)—at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or~~

~~(b)—after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first opened for use.~~

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

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

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(a) S.I. 2016/1154.

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

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

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

~~(5) — Before exercising—~~

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

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

~~(6) — Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).~~

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

~~(8) — Where—~~

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

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

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

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

~~(11) — In this article "protective works" in relation to a building means—~~

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

## Authority to survey and investigate the land

### 46

~~17.(1) — (1)~~ The undertaker may for the purposes of this Order enter on any land shown within the Order limits or on any land which may be affected by the authorised ~~project and development and~~

- ~~(a) (a)~~ — survey or investigate the land;
- ~~(b) (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) (c)~~ — without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- ~~(d) (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) (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) (3)~~ — Any person entering land under this article on behalf of the ~~undertaker—undertaker—~~

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

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

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

but such consent ~~shall~~must not be unreasonably withheld.

~~(5) If either the highway authority or street authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent (or such longer period as may be agreed with the undertaker in writing)—~~

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

~~(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.~~

## Removal of human remains

17

18. ~~(1)~~ (1) In this article “the specified land” means ~~[insert description of the~~ Order land~~].~~

(2) ~~(2)~~ Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it ~~shall~~ must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) ~~(3)~~ Before any such remains are removed from the specified land the undertaker ~~shall~~ must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, ~~by~~ by—

(a) ~~(a)~~ publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and

(b) ~~(b)~~ displaying a notice in a conspicuous place on or near to the specified land.

(4) ~~(4)~~ As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker ~~shall~~ must send a copy of the notice to ~~[insert the~~ relevant ~~local~~ planning authority~~].~~

(5) ~~(5)~~ At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) ~~(6)~~ Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to ~~be~~ be—

(a) ~~(a)~~ removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) ~~(b)~~ removed to, and cremated in, any crematorium,

and that person ~~shall~~ must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) ~~(7)~~ If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question ~~shall~~ is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who ~~shall~~ is to remove the remains and as to the payment of the costs of the application.

(8) ~~(8)~~ The undertaker ~~shall~~ must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

~~(9) If—~~

(9) If—

(a) ~~(a)~~ within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

(b) ~~(b)~~ such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) ~~(c)~~ within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) ~~(d)~~ it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker ~~shall~~ must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves

~~shall~~ must be re-interred in individual containers which ~~shall~~ must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

~~(10)~~ ~~(10)~~—If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker ~~shall~~ must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

~~(11)~~ ~~(11)~~—On the re-interment or cremation of any remains under this ~~article~~ article—

~~(a)~~ ~~(a)~~—a certificate of re-interment or cremation ~~shall~~ must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

~~(b)~~ ~~(b)~~—a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) ~~shall~~ must be sent by the undertaker to ~~[insert relevant local authority]~~ the address mentioned in paragraph (4).

~~(12)~~ ~~(12)~~—The removal of the remains of any deceased person under this article ~~shall~~ must be carried out in accordance with any directions which may be given by the Secretary of State.

~~(13)~~ ~~(13)~~—Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

~~(14)~~ ~~(14)~~—Section 25 of the Burial Act 1857—~~(a)~~ (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) ~~shall~~ is not to apply to a removal carried out in accordance with this article.

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[\(a\) 1857 c. 81. Substituted by Church of England \(Miscellaneous Provisions\) Measure 2014 No. 1 s.2 \(January 1, 2015; substitution has effect subject to transitional and saving provisions specified in SI 2014/2077 Sch.1 paras 1 and 2\).](#)

PART 5  
POWERS OF ACQUISITION

**Compulsory acquisition of land**

**18**

~~19.(1) — (1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project [development or to facilitate it, or as is incidental, to it] [or is required as replacement land].~~

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

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

~~(2) (4) — This article is subject to article 22 (Compulsory acquisition of rights etc.), article 25 (acquisition of land limited to subsoil lying more than 9 metres beneath surface only) and article 28 (temporary — Temporary use of land for carrying out the authorised project), development).~~

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

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

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to 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.

**~~Compulsory acquisition of land — incorporation of the mineral code~~**  
**19**

~~[Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981 (minerals) [is/are] incorporated in this Order subject to the modifications that —~~

- ~~(a) — paragraph 8(3) is not incorporated;~~
- ~~(b) — for "the acquiring authority" substitute "the undertaker";~~
- ~~(c) — [insert additional modifications].~~

~~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

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

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

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

#### **20**

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

(a) ~~(a)~~—no notice to treat ~~shall—may~~ be served under Part 1 of the 1965 Act; and

(b) ~~(b)~~—no declaration ~~shall—may~~ be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981—~~(a)~~ as applied by article ~~23—24~~ (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) ~~(2)~~—The authority conferred by article 28 (temporary use of land for carrying out the authorised ~~projectdevelopment~~) ~~shall—must~~ cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph ~~shall prevent—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.

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(a) 1981 c. 66. Section 4 was amended by sections 184, 185 and paragraph 2 of Schedule 18(1) to, the Housing and Planning Act 2016 (c.22).

## Compulsory acquisition of rights etc.

22.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

### **21**

(2) ~~(4)~~In respect of such parts of the Order land that cannot be acquired under article 19 (compulsory acquisition of land) ~~The~~ the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights and impose the restrictions described in the book of reference and shown on the ~~insert name/plan~~ land plans.

~~(2)—As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.~~

(3) ~~(3)~~—Subject to section 8 of the 1965 Act, ~~as substituted by article 26~~ (acquisition of part of certain properties provisions as to divided land), where the undertaker ~~creates or~~ acquires ~~an existing~~ a right over land ~~or imposes a restriction~~ under paragraph (1) ~~or~~ (2), the undertaker ~~shall is~~ not ~~to~~ be required to acquire a greater interest in that land.

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

## **Private rights of way**

### **22**

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) is to have 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.

(5) In any case where the acquisition of new rights or the imposition of a restriction under paragraph (1) or (2) 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.

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

(7) Subject to the modifications set out in Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

## Private rights



~~23.(1)~~ (1) Subject to the provisions of this article, all private rights ~~of way and restrictions~~ over land subject to compulsory acquisition under this Order ~~shall be extinguished~~ are extinguished

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

whichever is the ~~earlier~~ earliest.

~~(2)~~ (2) Subject to the provisions of this article, all private rights ~~of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes~~ and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right

- ~~(a)~~ (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- ~~(b)~~ (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 the earliest.

~~(3)~~ (3) Subject to the provisions of this article, and where so notified by the undertaker, all private rights ~~of way and restrictions over land owned by the undertaker~~ are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

~~(4)~~ (4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order ~~shall be~~ are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

~~(5)~~ (4) Any person who suffers loss by the extinguishment or suspension of any private right ~~of way or restriction~~ under this ~~article shall be~~ Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

~~(6)~~ (5) This article does not apply in relation to any right ~~of way~~ to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article ~~34-30~~ (statutory undertakers) applies.

~~(7)~~ (6) Paragraphs (1) to (3) ~~shall~~ are not ~~to~~ to

- ~~(a)~~ (a) any notice given by the undertaker ~~before~~ before
  - ~~(i)~~ (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land,
  - ~~(ii)~~ (ii) the undertaker's appropriation of it,
  - ~~(iii)~~ (iii) the undertaker's entry onto it, or
  - ~~(iv)~~ (iv) the undertaker's taking temporary possession of it,

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

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

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

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

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

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

### 23

~~24.(1)~~ (1) The Compulsory Purchase (Vesting Declarations) Act 1981 ~~shall apply~~ applies as if this Order were a compulsory purchase order.

~~(2)~~ (2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, ~~shall have~~ 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 shall include the particulars specified in subsection (3) in a notice which is--~~

~~(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and~~

~~(b) published in a local newspaper circulating in the area in which the land is situated."~~

~~(4) In that section, in subsection (2), for "(1)(b)" there shall be substituted "(1)" and after "given" there shall be inserted "and published".~~

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

~~"(5) For the purposes of this section, a person has a relevant interest in land if--~~

~~(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or~~

~~(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month."~~

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

~~-(a) in subsection (1), after "publication" there shall be inserted "in a local newspaper circulating in the area in which the land is situated"; and~~

~~(b) subsection (2) shall be is omitted.~~

~~(4) Section 5A (time limit for general vesting declaration) is omitted.~~

~~(5) In section 5B (extension of time limit during challenge)--~~

~~(a) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)" substitute "section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)"; and~~

~~(b) for "the three year period mentioned in section 5A" substitute "the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Millbrook Gas Fired Generating Station Order 201[ ]".~~

~~(6)~~ ~~(7)~~—In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” ~~shall be~~ are omitted.

~~(7)~~ In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

~~(8)~~ ~~(8)~~—References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 ~~shall~~ must be construed as references to that Act as applied by section 125 of the 2008 Act (as modified by article 26 (application of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

### Acquisition of subsoil only

#### 24

~~25.~~ ~~(1)~~—~~(1)~~ The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article ~~18-19~~ (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.

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

~~(3)~~ ~~(3)~~—Paragraph (2) ~~shall~~ does not prevent ~~article 26 (acquisition of part of certain properties)~~ Schedule 2A to the 1965 Act (as modified by article 26 (application of part 1 of the Compulsory Purchase Act 1965)) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### ~~Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~

#### ~~25~~

~~(1)~~—~~This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).~~

~~(2)~~—~~In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 18 (compulsory acquisition of land) so much of, or such rights in, the subsoil of~~ Application of Part 1 of the Compulsory Purchase Act 1965

~~26.~~ ~~(1)~~ Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

~~(2)~~ In section 4A(1) (extension of time limit during challenge)—

~~the land as may be required for the purposes of the authorised project.~~ ~~(3)~~ ~~Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.~~

~~(4)~~—References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose "level of the surface of the land" means—

~~(a)~~—in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;

~~(b)~~—in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level;  
or

~~(c) — in any other case, ground surface level.~~

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

#### **26**

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

~~(a) — a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and~~

~~(b) — a copy of this article is served on the owner with the notice to treat.~~

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

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

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

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

~~(a) — without material detriment to the remainder of the land subject to the counter-notice; or~~

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

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

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

~~(a) — without material detriment to the remainder of the land subject to the counter-notice; or~~

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

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

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

~~(a) — the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but~~

~~(b) — the material detriment is confined to a part of the land subject to the counter-notice;~~

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

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

~~(a) — none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and~~

~~(b) — the material detriment is not confined to a part of the land subject to the counter-notice;~~

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

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

~~(a) for “section 23 of (10) — Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”;~~ and

~~(b) for “the three year period specified in section 4” substitute “the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Millbrook Gas Fired Generating Station Order 201[X]”.~~

~~(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of authority to acquire land compulsorily) of the Millbrook Gas Fired Generating Station Order 201[X]”.~~

~~(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—~~

~~(a) omit paragraphs 1(2) and 14(2); and~~

~~(b) at the end insert—~~

~~“PART 4~~

~~INTERPRETATION~~

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 28 (temporary use of land for carrying out the authorised development) or article 29 (temporary use of land for maintaining the authorised development) of the Millbrook Gas Fired Generating Station Order 201[X].”

## **Rights under or over streets**

### **27**

~~27.(1)~~ (1) The undertaker may enter ~~on~~ upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised ~~project~~ development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised ~~project~~ development.

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

~~(3)~~ (3) Paragraph (2) ~~shall~~ does not apply in relation ~~to~~ to

~~(a)~~ (a) any subway or underground building; or

~~(b)~~ (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)~~ (4) Subject to paragraph (5), any person who is an owner or occupier of land ~~appropriated under~~ 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 ~~as a result~~ by the exercise of that power, shall ~~is to~~ be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

### **28**

~~28.(1)~~ (1) The undertaker may, in connection with the carrying out of the authorised ~~project~~ development

~~(a)~~ (a) ~~enter on and take possession of~~

~~(i)~~ (i) ~~enter on and take temporary possession so much~~ of the land specified in columns (1) and (2) of Schedule ~~G-9~~ 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 ~~project~~ development specified in column (4) of that Schedule;

~~(ii)~~ (ii) ~~any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);~~

~~(b)~~ (b) remove any buildings, ~~fences, debris~~ and vegetation from that land; ~~and~~

~~(c)~~ (c) construct temporary works (including the provision of means of access) and buildings on that land; ~~and~~

~~(d)~~ (d) ~~construct any works specified in relation to that land in column (3) of Schedule 9 (land of which temporary possession may be taken), or any other mitigation works.~~

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

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

(a) ~~article in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part final commissioning of the authorised project specified in relation to that land in column (4) of Schedule G-development; or~~

(b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of 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) (4) — Before Unless the undertaker has 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, the undertaker must, before~~ giving up possession of land of which temporary possession has been taken under this article, ~~the undertaker shall~~ remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker ~~shall-is~~ not to be required to replace a building or any debris removed under this article.

~~(5) (5) —~~The undertaker ~~shall-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) (6) —~~Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, ~~shall-is to~~ be determined under Part 1 of the 1961 Act.

~~(7) (7) —~~Nothing in this article ~~shall-affect-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 ~~project~~development, other than loss or damage for which compensation is payable under paragraph (5).

~~(8) (8) —~~The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) ~~except that the undertaker shall not be precluded from—(a)(i).~~

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

(a) ~~(a) —~~ creating and acquiring new rights or imposing restrictions over any part of ~~that land—the Order land identified in part 1 of the book of reference~~ under article ~~24–22~~ (compulsory acquisition of rights etc.); or

(b) (b) —acquiring any right in the subsoil of any part of the ~~subsoil (or rights in the subsoil) of that land—Order land identified in part 1 of the book of reference~~ under article ~~24–25~~ (acquisition of subsoil only) or ~~in accordance with—article 25–27 (acquisition of land limited to subsoil lying more than 9 metres beneath surface)—rights under or over streets)~~

~~(10) (9) —~~Where the undertaker takes possession of land under this article, the undertaker ~~shall-is~~ not to be required to acquire the land or any interest in it.

~~(11) (10) —~~Section 13 of the 1965 Act (refusal to give possession to acquiring authority) ~~shall-apply-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).

(12) 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).

Temporary use of land for maintaining the authorised projectdevelopment

**29**

~~29.(1)~~ ~~—(1)~~ Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised ~~projectdevelopment~~, the undertaker ~~may—may—~~

~~(a)~~ ~~(a)~~ enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised ~~projectdevelopment~~; and

~~(b)~~ ~~(b)~~ construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

~~(a)~~ ~~(a)~~ any house or garden belonging to a house; or

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

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

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

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

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

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

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

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

~~(10)~~ ~~(10)~~ Section 13 of the 1965 Act (refusal to give possession to acquiring authority) ~~shall—~~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)~~ ~~(11)~~ In this article “the maintenance period”; ~~in relation to any part of the authorised project,~~ means the period of 5 years beginning with the date ~~on which that part of the authorised project is first opened for use of final commissioning except where the authorised development is landscaping where~~ “the maintenance period” means such period as set out in the ~~landscape and ecological mitigation and management strategy which is approved by the relevant planning authority pursuant to Requirement 3 beginning with the date on which that part of the landscaping is completed provided that such period shall not exceed 10 years.~~

### **Special category land**

## **30**

~~(1)~~ The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and ~~[insert name of relevant body]~~ has certified that a scheme for the provision of the replacement land



as ~~[common/open space/fuel or field garden allotment]~~ has been implemented to its satisfaction.

(2) — On the requirements of paragraph (1) being satisfied, the replacement land shall vest in ~~[insert name of relevant body]~~ subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) — In this article—

"the special category land" means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled "Special Category Land Plan" attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and

"the replacement land" means the land identified in the book of reference and on the plan entitled "Replacement Land Plan" attached to the land plan.

### Statutory undertakers

30.

~~31~~

~~The~~ Subject to the provisions of Schedule 10 (protective provisions), the undertaker ~~may—~~ may—

- (a) ~~(a)~~ — acquire compulsorily the land belonging to statutory undertakers ~~shown on the land plan~~ within the ~~limits of the land to be acquired and described in the book of reference~~ Order land;
- (b) ~~(b)~~ — extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to statutory undertakers ~~shown on the [insert name] plan and described in the book of reference~~ on, under, over or within the Order land; and
- (c) ~~(c)~~ — create and acquire compulsorily the ~~new~~ rights and/or impose restrictions over any Order land belonging to statutory undertakers ~~shown on the [insert name] plan and described in the book of reference~~.

## Apparatus and rights of statutory undertakers in ~~stopped-up~~ streets

### 32

31.(1) ~~—(1) Where a street is stopped up under article 9 (stopping up of streets), any statutory utility altered or diverted or its use is temporarily prohibited or restricted under article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary prohibition or restriction of use of streets) or where a street is stopped up under article 12 (stopping up of streets) any statutory undertaker~~ whose apparatus is under, in, on, along or across the street ~~shall~~ is to have the same powers and rights in respect of that apparatus, subject to ~~the provisions of this article~~ Schedule 10 (protective provisions), as if this Order had not been made.

~~(2) — Where a street is stopped up under article 9, any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—~~

~~(a) — remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or~~

~~(b) — provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).~~

~~(3) — Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—~~

~~(a) — the execution of the relocation works required in consequence of the stopping up of the street; and~~

~~(b) — the doing of any other work or thing rendered necessary by the execution of the relocation works.~~

~~(4) — If in the course of the execution of relocation works under paragraph (2)—~~

~~(a) — apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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 to be necessary, then, if it involves cost in the execution of the relocation works 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.~~

~~(5) — For the purposes of paragraph (4)—~~

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

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

~~(6) — An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility 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.~~

~~(7) — Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—~~

~~(a) — the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and~~

~~(b) — the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.~~

~~(8) — In this article—~~

~~"apparatus" has the same meaning as in Part 3 of the 1991 Act;~~

~~"relocation works" means work executed, or apparatus provided, under paragraph (2); and~~

~~"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003.~~

## Recovery of costs of new connections

### 33

~~32.(1) —~~ (1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article ~~34~~ 30 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus ~~shall 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) (2) —~~ Paragraph (1) ~~shall does~~ not apply in the case of the removal of a public sewer but where such a sewer is removed under article ~~34~~ 30 (statutory undertakers) any person who ~~is—~~ is—

~~(a) (a) —~~ the owner or occupier of premises the drains of which communicated with ~~that the~~ that the sewer; or

~~(b) (b) —~~ the owner of a private sewer which communicated with that sewer,

~~shall~~ 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)~~ ~~(3)~~—This article ~~shall~~ does not have effect in relation to apparatus to which article ~~32~~-31 (apparatus and rights of statutory undertakers in ~~stopped-up~~ streets) or Part 3 of the 1991 Act applies.

~~(4)~~ ~~(4)~~—In this ~~paragraph~~ article—

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

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

## PART 6

### OPERATIONS

#### Felling or lopping of trees and removal of hedgerows

~~33.~~ ~~(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) and paragraph (4), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of the authorised development subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.

(5) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997~~(b)~~.

#### **Railway ~~and navigation~~ undertakings**

#### **34**

~~34.~~ ~~(1)~~ —(1) Subject to the following provisions of this article, the undertaker may not under article ~~8-9~~ (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 ~~Act~~—~~Act~~—

(a) ~~(a)~~—is under the control or management of, or is maintainable by, railway or tramway undertakers ~~or a navigation authority~~; or

(b) ~~(b)~~—forms part of a level crossing belonging to any such undertakers or to such ~~an~~ authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

---

(a) 2003 c. 21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations 2011/1210

(b) S.I. 1997/1160.

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

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

~~(4)~~—~~In this paragraph "navigation authority" means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.~~

## PART 7

### MISCELLANEOUS AND GENERAL

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

#### **35**

~~35.~~ ~~(1)~~—~~(1)~~ This article applies ~~to~~ ~~to~~

~~(a)~~ ~~(a)~~—any agreement for leasing to any person the whole or any part of the authorised ~~project~~ development or the right to operate the same; and

~~(b)~~ ~~(b)~~—any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised ~~project~~ 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)~~ ~~(2)~~—No enactment or rule of law regulating the rights and obligations of landlords and tenants ~~shall prejudice~~ prejudices the operation of any agreement to which this article applies.

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

~~(a)~~ ~~(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)~~ ~~(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)~~ ~~(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.

#### Cases in which land is to be treated as not being operational land

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

#### **36**

~~36.~~ Development consent granted by this Order ~~shall~~ 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 ~~for the purposes of that Act~~).

#### **Deemed consent under section 34 of the Coast Protection Act 1949**

#### **37**

~~The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949 to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.~~

### ~~Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~

#### ~~38~~

~~The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985 to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.~~

### ~~Felling or lopping of trees~~

#### ~~39~~

~~(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, 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 project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

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

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

### ~~Trees subject to tree preservation orders~~

#### ~~40~~

~~(1) The undertaker may fell or lop any tree described in Schedule J [and identified on the [insert name] plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub--~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

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

~~(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~

~~(b) — the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.~~

~~(3) — The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.~~

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

### **Certification of plans etc**

**41**

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

37.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (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), of the Control of Pollution Act 1974(b); or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) 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.

### **Protective provisions**

38. Schedule 10 (protective provisions) has effect.

---

(a) 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. There are other amendments not relevant to this Order.

(b) 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), paragraphs 33 and 35 of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the Electricity Act 1989 (c.29); Section 61 was 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(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.

## Modifications to and amendment of statutory provisions

39. The Rookery South (Resource Recovery Facility) Order 2011 is to be modified and amended for the purposes of this Order only as set out in Schedule 11 (modifications to the Rookery South (Resource Recovery Facility) Order 2011).

## Certification of plans etc.

~~40. (1) — The undertaker shall—~~ (1) The undertaker must, as soon as practicable after the making of this Order, submit to the ~~decision-maker~~ Secretary of State copies ~~of—of—~~

- ~~(a) (a) — the book of reference;~~
- ~~(b) — the land plan;~~
- ~~(c) — the rights plan;~~
- ~~(d) — the works plan;~~
- ~~(e) — the sections; and~~
- ~~(f) — any other plans or documents referred to in this Order;~~
- (b) design principles statement;
- (c) the environmental statement;
- (d) the land plans;
- (e) the rights of way, streets and access plan; and
- (f) the works plans;

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

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

## Service of notices

~~41.—(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(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

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

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(a) 1978 c.30. Section 7 was amended by section 144 and paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.



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

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

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

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

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

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

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

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

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

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

42.—(1) Where an application is made to or a request is made of the relevant planning authority, highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 10 (protective provisions) for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements but including the protective provisions contained in Schedule 10), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 12 (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) Save for applications made pursuant to Schedule 12 (procedure for discharge of requirements), if, within eight weeks after the application or request has been submitted to an authority, beneficiary of protective provisions or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed with the undertaker in writing) it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(4) The procedure set out in paragraph 1(3) of Schedule 12 (procedure for discharge of requirements) has effect in relation to any refusal by an authority, beneficiary of protective provisions, or an owner as referred to in paragraph (1) of this article to any consent, agreement or

approval required under this Order, including such as may be required pursuant to the protective provisions contained within Schedule 10 (protective provisions).

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (3).

## **Arbitration**

### **42**

43. Any difference under any provision of this Order, unless otherwise provided for, ~~shall~~ 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 ~~[insert appropriate body].~~ Secretary of State.

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

## **Schedule A Authorised Project**

### **Part 1 Authorised Development**

~~[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]~~

### **Part 2 Ancillary Works**

~~[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which would not be the subject of a separate provision [article] in this Order.]~~

## **Model Provisions in respect of requirements**

### **Interpretation**

#### **4**

~~In this Schedule--~~

~~"the 1990 Act" means the Town and Country Planning Act 1990;~~

~~"the 2008 Act" means the Planning Act 2008;~~

~~"authorised development" means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~

~~"the authorised project" means the authorised development and the ancillary works authorised by this Order;~~

<u>Date</u>	<u>Department for Business, Energy and Industrial Strategy</u>
-------------	--

AUTHORISED DEVELOPMENTIn Central Bedfordshire—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, and associated development under section 115(1)(b) of that Act consisting of a generating station with a gross rated electrical output of up to 299MWe comprising all or part of—

Work No. 1A development comprising—

- (a) 1 gas turbine generator;
- (b) 1 exhaust gas emission flue stack; and
- (c) external fin fan cooler(s).

Work No. 1B development comprising—

- (a) a control room/office/workshop;
- (b) telemetry apparatus;
- (c) a fire water tank;
- (d) a demineralised water storage tank;
- (e) an emergency generator including fuel storage tank;
- (f) gas pipeline and telemetry cabling and cathodic protection test/ transformer rectifier unit;
- (g) a natural gas receiving station and gas treatment compound containing—
  - (i) a pipeline inspection gauge (PIG) receiving facility;
  - (ii) isolation valves, metering, heating, filtering, compression, pressure regulation equipment;
  - (iii) electricity supply kiosks;
  - (iv) emergency generator including fuel storage tank;
  - (v) Joule-Thomson boiler(s); and
  - (vi) control and instrumentation kiosks.

Work No. 1C development comprising a transformer compound including generator step up transformer, unit and other transformers, overhead conductor gantry, overhead conductors and other plant and structures required to manage the transmission of electricity.

Work No. 1D development comprising—

- (a) security infrastructure, including cameras, perimeter fencing and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns;
- (c) internal roadways, car parking, pedestrian network, cycle parking, hardstanding and water treatment trailers;
- (d) a maintenance compound including hardstanding and welfare and administration facilities;
- (e) site drainage and waste management infrastructure, including relocation of existing infrastructure as required;
- (f) electricity, water, wastewater and telecommunications and other services including high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;

- (g) landscaping including tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation; and
- (h) other ancillary equipment.

**Work No. 2** development comprising works to construct an access road but only one of options 2A or 2B may be carried out—

**Option 2A** development comprising creation of a junction with Green Lane, creation of an access road from the junction including upgrading of an existing agricultural track and the low level restoration scheme agricultural track between Green Lane and Rookery South Pit, including permanent road surface and kerb stones, safety barrier(s), signing and road markings works, footway, drainage (including culverts), electricity and telecommunications connections and other services and other incidental works.

**Option 2B** development comprising a new means of access, including permanent road surface and kerb stones, safety barrier(s), signing and road markings works, footway, drainage (including culverts), electricity and telecommunications connections and other services and other incidental works.

**Work No. 3A** development comprising—

- (a) an above ground installation (also referred to as a minimum offtake connection compound) containing—
  - (i) a minimum offtake connection comprising remotely operable valves, control and instrumentation kiosks and electrical supply kiosks;
  - (ii) a pipeline inspection gauge (PIG) facility, comprising a PIG launching facility, emergency control valves, isolation valves, control and instrumentation kiosks, and electricity supply kiosks;
- (b) security infrastructure, including cameras, lighting (including perimeter lighting columns) and perimeter fencing;
- (c) site drainage and waste management infrastructure;
- (d) electricity and telecommunications connections and other services;
- (e) below ground sacrificial anode pit; and
- (f) landscaping including tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation.

**Work No. 3B** development comprising creation of a permanent access and a construction access from an existing agricultural track into numbered work 3A, upgrading of an existing agricultural track and junction between Houghton Lane and numbered work 3A, including permanent road surface and kerb stones, signing and road markings works, drainage (including culverts), electricity and telecommunications connections and other services and other incidental works.

**Work No. 4A** development comprising—

- (a) a new underground gas pipeline connection and telemetry cabling, approximately 1.8km in length connecting Work No. 1B to Work No. 3A;
- (b) pipeline field marker posts and cathodic protection test/ transformer rectifier unit;
- (c) below ground drainage works;
- (d) works required in order to protect existing utilities infrastructure;
- (e) tree and hedge removal;
- (f) landscaping including tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation; and
- (g) ~~"the code of construction practice" means the code~~ creation of construction practice agreed by ~~[insert relevant body] on [insert date];~~ access from Houghton Lane,

Work No. 4B development comprising a construction laydown area including areas of hardstanding and site and welfare offices and workshop;

~~"the environmental document" means the document certified as the environmental document by the decision-maker for the purposes of this Order;~~

~~"highway" and "highway authority" have the same meaning as in the Highways Act 1980;~~

~~"the Order limits" means the limits shown on the works plan within which the authorised project may be carried out;~~

~~"relevant planning authority" means—~~

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~"stage" means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the Commission pursuant to requirement 3 (stages of authorised development).~~

Work No. 5 development comprising—

- (a) 400kV substation including overhead line gantry and site office and welfare accommodation and emergency auxiliary supplies;
- (b) underground high voltage electrical cables and associated telemetry and electrical protection auxiliary cabling;
- (c) security infrastructure including perimeter fencing with gates, security cameras and site lighting infrastructure, including perimeter lighting columns;
- (d) landscaping including bunds, tree planting, fencing and other boundary treatments and ecological mitigation;
- (e) site drainage and waste management infrastructure;
- (f) electricity and telecommunications connections and other services; and
- (g) internal roadways, car parking, pedestrian network and hardstanding for planned maintenance.

Work No. 6 development comprising works to construct a 400kV electrical connection between transmission towers ZA377 and ZA379 and Work No.5—

- (a) 400 kV sealing end compounds (including downloads to connect to the new transmission tower);
- (b) underground or ducted high voltage electrical cables and associated telemetry and electrical protection auxiliary cabling and below ground drainage works;
- (c) security infrastructure including perimeter fencing with gates, security cameras, site lighting infrastructure, including perimeter lighting columns;

- (d) permanent means of access from the low level restoration scheme secondary access to numbered work 6(a), taking the form of an agricultural hard-core track not more than 6 m wide and creation of permanent diversion of the low level restoration scheme secondary access;
- (e) temporary means of access;
- (f) landscaping including bunds, tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation;
- (g) site drainage;
- (h) a new transmission tower (including downleads to connect to the sealing end compounds); and
- (i) removal of transmission tower ZA378.

Work No 7 development comprising—

- (a) erection and later removal of temporary transmission tower(s);
- (b) erection and later removal of scaffolding, stringing of conductors forming a temporary diversion of the existing 400kV transmission line;
- (c) erection and later removal of scaffolding, re-stringing of conductors in the alignment of the existing 400 kV transmission line;
- (d) tree, hedge and fence removal;
- (e) security infrastructure including temporary perimeter fencing with gates, security cameras and site lighting; and
- (f) landscaping including tree planting, fencing and ecological mitigation.

Work No. 8 development comprising a construction laydown area(s) including areas of hardstanding and site and welfare offices and workshops.

and such other buildings, structures, 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 they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

REQUIREMENTS**Time limits****2**

1. The authorised development must be ~~begun-commenced~~ within ~~[insert number] five~~ years of the ~~date of this Order being made~~.

**~~Stages of authorised development~~****~~3~~**

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

**Detailed design approval****4**

~~No [stage of the] authorised development shall commence until [for that stage] written details of the following have, after consultation with the relevant planning authority, been submitted to and approved by the Commission--~~

~~[or~~

**~~5~~**

~~No [stage of the] authorised development shall commence until details of the layout, scale and external appearance of the following elements of the authorised development [within that stage] have, after consultation with the relevant planning authority, been submitted to and approved by the Commission]~~

**~~6~~**

~~The authorised development must be carried out in accordance with the approved details.~~

**~~Provision of landscaping~~****~~7~~**

~~No [stage of the] authorised development shall until commence a written landscaping scheme [for that stage] has, after consultation with the relevant planning authority, been submitted to and approved by the Commission. The landscaping scheme must include details of all proposed hard and soft landscaping works, including--~~

~~(a) — location, number, species, size and planting density of any proposed planting;~~

2.—(1) The authorised development must be carried out in accordance with the approved plans, inclusive of any limits of deviation, bearing the references listed below and 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 16)—

**Table 1**

<u>Works plans</u>
<u>Rights of way, streets and access plan</u>
<u>The access road visibility splay plan (Document Reference 6.2)</u>

(2) The authorised development must be carried out in accordance with the parameters specified below (as the same may be amended by approval of the relevant planning authority pursuant to requirement 16)—

**Table 2**

<u><i>Building or structure</i></u>	<u><i>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></u>	<u><i>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></u>	<u><i>Maximum length (metres)</i></u>	<u><i>Minimum length (metres)</i></u>	<u><i>Maximum width (metres)</i></u>	<u><i>Minimum width (metres)</i></u>
<u>The gas turbine generator (including gas turbine, generator, air inlet filter house, air inlet duct, exhaust diffuser, and auxiliaries such as lube oil system, air dryers, fuel gas filter package, instrument air system, compressor washing) (Part of numbered work 1A)</u>	<u>27</u>	<u>=</u>	<u>50</u>	<u>=</u>	<u>40</u>	<u>=</u>
<u>The exhaust gas emission</u>	<u>35</u>	<u>32.5</u>	<u>12</u>	<u>=</u>	<u>12</u>	<u>=</u>

<u>Building or structure</u>	<u>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</u>	<u>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</u>	<u>Maximum length (metres)</u>	<u>Minimum length (metres)</u>	<u>Maximum width (metres)</u>	<u>Minimum width (metres)</u>
<u>flue stack (part of numbered work 1A)</u>						
<u>Control room/office/workshop (part of numbered work 1B)</u>	<u>7</u>	=	<u>45</u>	=	<u>25</u>	=
<u>Emergency generator (part of numbered work 1B)</u>	<u>6</u>	=	<u>13</u>	=	<u>5</u>	=
<u>Raw/fire water tank (part of numbered work 1B)</u>	<u>15</u>	=	<u>15</u>	=	<u>15</u>	=
<u>Demineralised water tank (part of numbered work 1B)</u>	<u>5</u>	=	<u>5</u>	=	<u>5</u>	=
<u>Gas receiving station (including compression station, emergency generator, Joule-Thompson boilers and other auxiliary control cabinets) (part of numbered work 1B)</u>	<u>10</u>	=	<u>70</u>	=	<u>50</u>	=

<u>Building or structure</u>	<u>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</u>	<u>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</u>	<u>Maximum length (metres)</u>	<u>Minimum length (metres)</u>	<u>Maximum width (metres)</u>	<u>Minimum width (metres)</u>
<u>Fin Fan Cooler(s) (part of numbered work 1A)</u>	<u>10</u>	=	<u>28</u>	=	<u>14</u>	=
<u>Transformer compound (including generator step up transformer, unit and other transformers, overhead line gantry and associated equipment) (part of numbered work 1C)</u>	<u>15</u>	=	<u>65</u>	=	<u>60</u>	=
<u>Gatehouse (part of numbered work 1D)</u>	<u>4.5</u>	=	<u>9</u>	=	<u>8</u>	=
<u>Above ground installation (numbered work 3A)*</u>	<u>3</u>	=	<u>85</u>	=	<u>35</u>	=
<u>Pipeline inspection gauge facility (part of numbered work 3A)*</u>	<u>3</u>	=	<u>35</u>	=	<u>30</u>	=
<u>Minimum offtake connection (part of numbered work 3A)*</u>	<u>3</u>	=	<u>35</u>	=	<u>35</u>	=
<u>Substation</u>	<u>14</u>	=	<u>200</u>	=	<u>150</u>	=

<u>Building or structure</u>	<u>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</u>	<u>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</u>	<u>Maximum length (metres)</u>	<u>Minimum length (metres)</u>	<u>Maximum width (metres)</u>	<u>Minimum width (metres)</u>
<u>(including the auxiliary building) (part of numbered work 5)</u>						
<u>Each sealing end compound (part of numbered work 6)**</u>	<u>17</u>	<u>=</u>	<u>45</u>	<u>=</u>	<u>35</u>	<u>=</u>
<u>Transmission tower (part of numbered work 6)**</u>	<u>49</u>	<u>=</u>	<u>40</u>	<u>=</u>	<u>30</u>	<u>=</u>
<u>Each temporary tower or mast (part of numbered work 7)**</u>	<u>55</u>	<u>=</u>	<u>47</u>	<u>=</u>	<u>32</u>	<u>=</u>

\* Existing site level is approximately 70m AOD

\*\* Existing site level is approximately 49m AOD

(3) To the extent that design principles for any numbered work are set out in the design principles statement, that numbered work must be designed substantially in accordance with the relevant design principle set out therein.

(4) Except to the extent approved pursuant to requirement 2, numbered works 1, 3A, 5 and 6(a) must not commence until, for that numbered work, details of the layout, scale and external appearance of the numbered work have been submitted to and approved by the relevant planning authority.

### Provision of landscaping and ecological mitigation

3. Each of numbered works 1, 2, 3A, 4, 5, 6 and 7 of the authorised development must not commence until, for that numbered work, a written strategy substantially in accordance with the outline landscape and ecological mitigation and management strategy has been submitted to and approved by the relevant planning authority. The strategy must include details of all proposed hard and soft landscaping works and ecological mitigation measures and include details of—

- (a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting;
- (b) ~~(b)~~—cultivation, importing of materials and other operations to ensure plant establishment;
- (c) ~~(c)~~—bunds and proposed finished ground levels;
- (d) ~~(d)~~—hard surfacing materials;
- ~~(e)~~—vehicular and pedestrian access, parking and circulation areas;
- (e) measures for the management of the ecological resources that will remain within the Order land on completion of the authorised development.
- ~~(f)~~—minor structures, such as furniture, refuse or other storage units, signs and lighting;
- ~~(g)~~—proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- ~~(h)~~—details of existing trees to be retained, with measures for their protection during the construction period;
- ~~(i)~~—retained historic landscape features and proposals for restoration, where relevant; and
- ~~(j)~~—implementation timetables for all landscaping works.

#### Implementation and maintenance of landscaping and ecological mitigation measures

##### 8

1.~~(1)~~—(1) All landscaping works and ecological mitigation measures must be carried out in accordance with the landscaping scheme strategy approved under requirement ~~7~~ and ~~to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice~~3.

~~(2)~~ (2)—The landscaping works and ecological mitigation measures must be carried out in accordance with implementation timetables approved in the strategy approved under requirement ~~6~~3.

~~(3)~~—Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the Commission, 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 Commission.

#### Trees

##### 9

~~(1)~~—No [stage of the] authorised development shall commence until written details of any proposed tree planting and the proposed times of planting have, after consultation with the relevant planning authority, been approved in writing by the Commission; and all tree planting shall be carried out in accordance with those details and at those times.

~~(2)~~—If within a period of [two years] beginning with the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed,

~~uprooted or destroyed or dies, [or becomes, in the opinion of the Commission, seriously damaged or defective,] another tree of the same species and size as that originally planted shall be planted at the same place, unless the Commission gives its written consent to a variation.~~

### Highway accesses

2.—(1) Numbered work 1 of the authorised development must not commence until either the Rookery South access road has been completed to a suitable standard for construction and numbered work 2B has been completed to a suitable standard for construction or numbered work 2A has been completed to a suitable standard for construction.

**10**

~~(2) (1) — No [stage of the] authorised development shall commence until [for that stage,] Each of numbered works 2 and 3 of the authorised development must not commence until for that numbered work, written details of the siting, design and layout (to the extent either not provided as part of or differing from, the details contained in Schedule 1, the works plans or requirement 2 Table 1) of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the relevant planning authority (in consultation with the highway authority, been submitted to and approved by the Commission).~~

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

(4) Following the completion of construction of numbered work 2, unless the Rookery South access road is constructed pursuant to the Rookery South (Resource Recovery Facility) Order 2011, the access road visibility splay must be kept clear at all times of obstructions, buildings and vegetation that may obstruct or impair visibility from or to Green Lane to or from numbered work 2.

### Fencing and other means of site perimeter enclosure

3.—(1) Each of numbered works 1, 3A, 4, 5, 6 and 7 of the authorised development must not commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure for that numbered work have been submitted to and approved by the relevant planning authority.

(2) Any construction sites must remain securely fenced at all times during construction of the authorised development.

(3) The fencing and other means of enclosure must be constructed in accordance with the approved details.

~~(3) — No [stage of the] authorised development shall be begun until [for that stage,] a written Access Management Scheme has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

### Surface and foul water drainage

4.—(1) Each of numbered works 1, 2, 3A, 5 and 6 must not commence until, for that numbered work, written details of the surface and foul water drainage strategy, which shall incorporate appropriate elements of the low level restoration scheme drainage strategy where applicable, for the construction and operational phases of the authorised development have been submitted to and approved by the relevant planning authority.

~~(2) (4) — The Access Management Scheme must be carried out. The surface and foul water drainage system must be constructed in accordance with the approved details, before the operational phase of that part of the authorised development commences.~~

## Contamination and groundwater

5.—(1) Each of numbered works 1 to 8 must not commence until, for that numbered work, a scheme (which may be included in the construction environment management plan) to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment and ground conditions relevant to foundation design and ground stability has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) The scheme must include an investigation and assessment report to identify ground conditions and ground stability matters and must identify appropriate foundation design measures.

### **Public rights of way**

#### **11**

~~(1) No [stage of the] authorised development shall commence that would affect [insert details of relevant right of way] until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(2) The alternative [insert details of relevant right of way] shall be implemented in accordance with the approved plan and specification.~~

### **Fencing--special roads**

#### **12**

~~(1) No [stage of the] authorised development shall commence until written details of the design and construction of any boundary fencing for special roads have, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(2) The authorised development shall be carried out in accordance with the approved design and construction.~~

~~(3) "Special road" has the same meaning as in section 329 of the Highways Act 1980.~~

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

#### **13**

~~(1) No [stage of the] authorised development shall commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure [for that stage] have, after consultation with the relevant planning authority, been submitted to and approved by the Commission.~~

~~(2) The [insert description], and any construction sites, must remain securely fenced at all times during construction of the authorised development.~~

~~(3) Any temporary fencing must be removed on completion of the authorised development.~~

~~(4) — Any approved permanent fencing of the new [insert description] must be completed before the [insert description] is brought into use.~~

### **Surface water drainage**

#### **14**

~~(1) — No [stage of the] authorised development shall commence until [for that stage,] written details of the surface and foul water drainage system (including means of pollution control) have, after consultation with the relevant planning authority and the sewerage and drainage authority, been submitted to and approved by the Commission.~~

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

### **Contaminated land and groundwater**

#### **15**

~~(1) — No [stage of the] authorised development shall commence until a written scheme [applicable to that stage,] to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the Commission.~~

~~(2) — The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.~~

~~(4) (3) — Remediation must be carried out in accordance with the approved scheme.~~

~~(5) Foundation design measures must be carried out in accordance with the approved scheme.~~

### **Archaeology**

#### **16**

~~(1) — No [stage of the] authorised development shall commence until [for that stage,] a written scheme for the investigation of areas of archaeological interest [as identified in section [ ] of the environmental document] has, after consultation with **the relevant planning authority, been submitted to and approved by the Commission.**~~

~~6.—(1) Each of numbered works 3A, 4A, 6 and 7(a) of the authorised development must not commence until, for that numbered work, a written scheme of archaeological investigation has been submitted to and approved in writing by the relevant planning authority. The submitted written scheme of archaeological investigation must include the following —~~

~~(a) (2) — The scheme shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any provision to be made for a programme of excavation fieldwork and post-excavation assessment should significant archaeological remains that may be found be encountered, and where warranted post-excavation analysis;~~



(b) provision to be made for publication and dissemination of the results of any assessment made pursuant to sub-paragraph (a), including for public benefit and understanding, should the nature of the archaeology warrant it; and

(c) provision to be made for the deposition of the finds assemblage and the site archive.

~~(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the Commission.~~

~~(2) (4) Any archaeological works or watching brief~~ The archaeological investigation must be carried out in accordance with the approved scheme.

## **Ecological management plan**

### **17**

### **Construction Environment Management Plan**

7.—(1) Each of numbered works 1 to 8 of the authorised development must not commence until a construction environment management plan covering that numbered work has been submitted to and approved by the relevant planning authority. The final construction environment management plan must be substantially in accordance with the outline construction environment management plan and must include the following—

(a) the construction and phasing programme;

~~(b) (1) No [stage of the] authorised development shall commence until a written ecological management plan [for that stage] reflecting the survey results and ecological mitigation and enhancement measures included in the environmental document, after consultation liaison procedures to discuss and agree all relevant construction aspects with the relevant planning authority, shall be submitted to and approved by the Commission;~~

(c) complaints procedures;

(d) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, lighting, noise and vibration);

(e) waste management;

(f) an assessment of the site specific risks to and mitigation measures designed to protect controlled waters (surface and groundwaters) including pollution incident control;

(g) procedure for crossing watercourses (by reference to best practice methods);

(h) landscape and visual impact mitigation (specifically the protection of trees and hedgerows to be retained in accordance with BS 5837: 2012 (or its updates) and a scheme to minimise visual intrusion of the construction works);

(i) security measures;

(j) measures for the maintenance of construction equipment;

(k) restoration of site following completion of construction; and

(l) liaison procedures with all other contractors working within Rookery Pit regarding programmed construction movements and processes.

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

## **Code of construction practice**

### **18**

~~Construction works shall be carried out in accordance with the agreed code of construction practice, unless otherwise agreed by the Commission, after consultation with relevant planning authority.~~

~~for~~  
**19**

~~(1) No [stage of the] authorised development shall commence until a code of construction practice shall, after consultation with the relevant planning authority, be submitted to and approved by the Commission.~~

~~(2) All construction works shall~~ All construction works must be undertaken in accordance with the approved ~~code, unless otherwise agreed by the Commission.~~ construction environment management plan.

### Construction traffic management plan

8.—(1) Each of numbered works 1 to 8 of the authorised development must not commence until, for that numbered work, a construction traffic management plan has been submitted to and approved by the relevant planning authority in consultation with the highway authority. The construction traffic management plan must be substantially in accordance with the outline construction traffic management plan and must include the following—

- (a) construction vehicle routing plans;
- (b) site access plans;
- (c) measures to ensure the protection of users of any footpath within the Order limits which may be affected by the construction of the authorised development;
- (d) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (e) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads;
- (f) details of escorts for abnormal indivisible loads;
- (g) proposals for temporary warning signs and banksman and escort details;
- (h) details of any temporary or permanent improvements to highways; and
- (i) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during any of the activities, operations or works associated with the creation or upgrading of any permanent or temporary means of access pursuant to this Order.

(2) The construction traffic management plan must be implemented as approved.

~~*[Note: The code should specify measures designed to minimise the impacts of construction works, such as means of minimising pollution from dust, noise, vibration and lighting, wheel cleansing facilities, routes for construction traffic, working hours etc To the extent that it does not, or does not do so adequately, separate conditions are likely to be required, some of which are indicated below].*~~

### **Design of roads**

**20**

~~(1) No [stage of the] authorised development consisting of the construction or alteration of a street which is a trunk road or including any traffic management and control measures shall commence until written details of the design of the street shall, after consultation with the Highways Agency, be submitted to and approved by the Commission.~~

~~(2) The [authorised development] construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved design.~~

## **External lighting**

### **21**

No [stage of the] authorised development, shall commence until written details of any external lighting to be installed at any of the construction sites [within that stage], including measures to prevent light spillage, shall, after consultation with the **relevant planning authority** and the highway authority, be submitted to and approved by the Commission; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period.

## **Construction traffic**

### **22**

(1) — No [stage of the] authorised development shall commence until written details of the preferred route to be used by construction traffic shall, after consultation with the relevant planning authority and the highway authority, be submitted to and approved by the Commission.

(2) — Notices shall be erected and maintained throughout the period of construction at every construction site exit, indicating to drivers the route agreed by the Commission for traffic entering and leaving the site.

## Control of noise during ~~construction and maintenance~~operation

### 23

~~9.~~(1) ~~No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for noise management during construction and maintenance [of that stage]~~ —(1) Prior to the date of final commissioning a written noise scheme providing for the control of noise generated during the operation of the authorised development must

~~has been submitted to and approved by the Commission.~~(2) ~~The scheme shall set out the particulars of—~~

~~(a) the works, and the method by which they are to be carried out;~~

~~(b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and~~

~~(c) a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.~~

~~(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the [relevant stage of the] authorised development.~~

~~(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.~~ be submitted to and approved by the relevant planning authority. The noise scheme must include the following:

(a) the locations at which noise will be monitored;

(b) the defined representative background sound level at South Pilling Farm house;

(c) the method of noise measurement (which must be in accord with BS 4142:2014, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances) and when such measurements will be carried out; and

(d) a complaints procedure.

(2) Except in the case of an emergency, noise (in terms of the BS 4142:2014 rating level) emitted from the operation of the authorised development must be no greater than the defined representative background sound level as approved in the noise scheme submitted pursuant to sub-paragraph (1).

(3) The noise scheme must be carried out as approved.

## Construction hours

### 24

~~10.~~(1) Subject to sub-paragraph (2) no construction work, or the delivery or removal of materials, may take place on any Sunday or public holiday and no construction work, or the delivery or removal of materials, may take place outside the hours of—

(a) 0700 and 1900 hours on weekdays; and

~~(b) (1) Construction work shall not take place other than between [0800 and 1800 hours on weekdays and 0800–0700 and 1300 hours on Saturdays, excluding public holidays], unless otherwise agreed by the Commission.~~

(2) Sub-paragraph (1) does not prevent construction works, or the delivery or removal of materials, being carried out on public holidays or outside the hours set out in sub-paragraph (1) with the prior written approval of the relevant planning authority.

(3) ~~(2) — Nothing in~~ Nothing in sub-paragraph (1) precludes a start-up period from ~~[0730 to 0800]~~ 0630 to 0700 and a shut down period from ~~[1800 to 1830]~~ 1900 to 1930 on weekdays (excluding public holidays) and start-up period from 0630 to 0700 and a shut down period from 1300 to 1330 on a Saturday.

### Lighting strategy

11.—(1) Each of numbered works 1, 3A and 5 must not commence until a written scheme for the management and mitigation of artificial light emissions for that numbered work which is substantially in accordance with the outline lighting strategy has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the operation of the relevant numbered work.

### Construction Travel Plan

12.—(1) Each of numbered works 1 to 8 of the authorised development must not commence until, for that numbered work, a construction worker travel plan has been submitted to and approved by the relevant planning authority. The construction worker travel plan must be substantially in accordance with the outline travel plan (other than the measures which relate to the operational phase).

(2) The construction worker travel plan must be carried out as approved.

### **Control of noise** Travel plan during operational phase

#### **25**

~~(1) — No authorised development shall commence operation until, after consultation with the relevant planning authority, a written scheme for noise management including monitoring and attenuation for the use of the authorised project has been submitted to and approved by the Commission.~~

~~(2) — The noise management scheme must be implemented as approved and maintained for the duration of use of the authorised project.~~

### **Control of odour emissions**

#### **26**

13.—(1) Prior to the date of final commissioning a written operational travel plan must be submitted to and approved by the relevant planning authority. The operational travel plan must be substantially in accordance with the outline measures to propose sustainable transport during the operational phase set out in the outline travel plan.

(2) The operational travel plan must be carried out as approved.

~~(1) — No [stage of the] Operation of the authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of odour emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of odour emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

### **Control of artificial light emissions**

#### **27**

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of artificial light emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

### **Control of dust emissions**

#### **28**

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of dust emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of dust emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development~~

### **Control of smoke emissions**

#### **29**

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of smoke emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of smoke emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

### **Control of steam emissions**

#### **30**

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of steam emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of steam emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

### **Control of insects**

#### **31**

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme to ensure the prevention of infestation or emanation of insects from the authorised development has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the prevention of infestation or emanation of insects must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

~~(3) — **For the purposes of this requirement, "insects" excludes insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected), unless they are included in respect of section 9(5) of that Act only.**~~

### **Accumulations and deposits**

#### **32**

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management of any accumulations [or] and deposits whose effects may be harmful or visible or otherwise noticeable from outside the Order limits has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management of accumulations and deposits must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

### **Travel plan**

#### **33**

~~(1) — No [stage of the] of the authorised development shall be begun until, after consultation with the relevant planning authority and the highway authority, a travel plan [for the contractor's workforce], which must include details of the expected means of travel to and from [the authorised [project]] [the construction site] and any parking to be provided, has been submitted to and approved by the Commission.~~

~~(2) — No part of the authorised project shall be brought into use until, after consultation with the relevant planning authority and the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised project and any parking to be provided, has been submitted to and approved by the Commission.~~

~~(3) — The plan approved under paragraph (1) must be implemented during the construction of the authorised development and the plan approved under paragraph (2) must be implemented [within one month of the authorised project being brought into use] and shall continue to be implemented for as long as the authorised project is used.~~

### **European protected species**

#### **34**

~~(1) — No [stage of the] authorised development shall commence until [further] survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by the authorised development or in any of the trees to be lopped or felled or buildings to be demolished during [that stage of] the authorised development.~~

~~(2) — Where a European protected species is shown to be present, no authorised development [of that stage] shall be begun until, after consultation with the relevant planning authority, Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures has been submitted to and approved by the Commission; and the authorised development shall be carried out in accordance with the approved scheme.~~

~~(3) — "European protected species" has the same meaning as in regulations 38 and 42 of the Conservation (Natural Habitats, &c) Regulations 1994.~~

### ~~Restoration of land used temporarily for construction~~

#### ~~35~~

~~Any land within the Order limits which is used temporarily for construction must be reinstated to its former condition, or such condition as the Commission may approve, within [six] months of completion of authorised development.~~

### ~~Requirement for written approval~~

#### ~~36~~

~~Where under any of the above requirements the approval or agreement of the Commission or another person is required, that approval or agreement must be given in writing.~~

14.—(1) In any calendar year the operation of the gas turbine generator comprised in numbered work 1A shall not exceed 2,250 hours in total provided that the five (5) year rolling average does not exceed 1,500 hours per calendar year.

(2) Within three months of the end of a calendar year, the undertaker must submit a written report to the relevant planning authority detailing the actual total number of hours of operation of the gas turbine generators comprised in numbered work 1A.

(3) For the purposes of this requirement, "operation of the gas turbine generator" means the duration in which any energy is exported at the settlement metering point, being the point at which a supply to the transmission system from the authorised development is measured.

### Decommissioning strategy

15.—(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 numbered work 1 must be submitted to the relevant planning authority.

(2) The demolition and removal of numbered work 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.



### **Amendments to approved details**

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

(2) Approval under sub-paragraph (1) for the amendments to the parameters identified in requirement 2(2) 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).

### **Low Level Restoration Scheme**

**17.** Insofar as compliance with any requirement in this Part or any article of this Order prevents the undertaker from complying with any condition contained in the permitted low level restoration scheme for Rookery South Pit (reference number BC/CM/2000/8), the undertaker shall not be in breach of that condition.

SCHEDULE 3

Article 8

STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

Table 3

**37**

~~With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the Commission, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the Commission.~~

**Schedule B  
Streets Subject to Street Works**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
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<u><i>(1)</i></u> <u><i>Area</i></u>	<u><i>(2)</i></u> <u><i>Street subject to alteration of layout</i></u>	<u><i>(3)</i></u> <u><i>Description of alteration</i></u>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Green Lane</u></a>	<a href="#"><u>Installation of signage and markings between the points marked A and B on the rights of way, streets and access plan to facilitate the construction and operation of numbered work 2.</u></a>
<a href="#"><u>Bedford Borough Council</u></a>	<a href="#"><u>Green Lane</u></a>	<a href="#"><u>Installation of signage and markings between the points marked A and B on the rights of way, streets and access plan to facilitate the construction and operation of numbered work 2.</u></a>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>Central Bedfordshire Council</u>	<u>Green Lane</u>	<u>Creation of new access comprising part of numbered work 2A including the lowering of the levels of the kerb between the points marked C and D on the rights of way, streets and access plan to provide permanent access to numbered works 1 and 5.</u>
<u>Central Bedfordshire Council</u>	<u>Access Road serving Rookery North and South Pits</u>	<u>Creation of new access comprising part of numbered work 2A including the lowering of the levels of the kerb between the points marked E and F on the rights of way, streets and access plan to provide permanent access to numbered works 1 and 5.</u>
<u>Central Bedfordshire Council</u>	<u>Access Road serving Rookery North and South Pits</u>	<u>Upgrading and widening of the existing access comprising numbered work 2A between the points marked F and G on the rights of way, streets and access plan to provide permanent access to numbered works 1 and 5.</u>
<u>Central Bedfordshire Council</u>	<u>Access Road serving Rookery North and South Pits</u>	<u>Creation of new access comprising part of numbered work 2 between the points marked G and I on the rights of way, streets and access plan to provide permanent access to numbered works 1 and 5.</u>
<u>Central Bedfordshire Council</u>	<u>Access track leading from Houghton Lane to Park Farm</u>	<u>Upgrading the existing access comprising numbered work 3B between the points marked MM and NN on the rights of way, streets and access plan to provide permanent access to numbered work 3A.</u>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>Central Bedfordshire Council</u>	<u>Houghton Lane</u>	<u>Upgrading the existing access comprising numbered work 3B between the points marked OO and PP on the rights of way, streets and access plan to provide permanent access to numbered work 3A.</u>
<u>Central Bedfordshire Council</u>	<u>Access track leading from Houghton Lane to Park Farm</u>	<u>Creation of new access comprising part of numbered work 3B between the points marked QQ and RR on the rights of way, streets and access plan to provide permanent access to numbered work 3A.</u>
<u>Central Bedfordshire Council</u>	<u>low level restoration scheme secondary access track</u>	<u>Creation of new access comprising part of numbered work 6 within the area shown on the rights of way, streets and access plan with orange hatching to provide permanent access to numbered work 6(a).</u>

PART 2

TEMPORARY ALTERATION OF LAYOUT

Table 4

**Schedule G**  
**Streets to be Stopped Up**

**Part 1**  
**Streets for which a Substitute is to be Provided**

	(1)	(1) <u>Area</u>	(2) <u>Street subject to alteration of layout</u>	(3) <u>Description of alteration</u>
<u>Central Bedfordshire Council</u>	<u>Access track leading from Houghton Lane to Park Farm</u>			<u>Creation of new access comprising part of numbered work 3B between the points marked RR and NN on the rights of way, streets and access plan to provide construction access to numbered work 3A.</u>
<u>Central Bedfordshire Council</u>	<u>Houghton Lane</u>			<u>Creation of new access comprising part of numbered word 4A between the points marked GG and HH on the rights of way, streets and access plan to provide construction access both north and south of Houghton Lane.</u>

STREETS SUBJECT TO STREET WORKSTable 5

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street Subject to Street Works</u>	<u>(3)</u> <u>Description of the street works</u>
<u>Central Bedfordshire Council</u>	<u>Green Lane</u>	<u>Works to enable the creation of an access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked A and B on the rights of way, streets and access plan.</u>
<u>Bedford Borough Council</u>	<u>Green Lane</u>	<u>Works to enable the creation of an access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked A and B on the rights of way, streets and access plan.</u>
<u>Central Bedfordshire Council</u>	<u>Access Road serving Rookery North and South Pits</u>	<u>Works to enable the creation of an access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked E and F on the rights of way, streets and access plan.</u>
<u>Central Bedfordshire Council</u>	<u>Access Road serving Rookery North and South Pits</u>	<u>Works to upgrade and widen the existing access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked F and G on the rights of way, streets and access plan.</u>
<u>Central Bedfordshire Council</u>	<u>Established agricultural access tracks between South Pillinge Farm and Rookery South Pit</u>	<u>Works for numbered work 6 to be installed in the street between the points marked J and K on the rights of way, streets and access plan.</u>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street Subject to Street Works</u>	<u>(3)</u> <u>Description of the street works</u>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Established agricultural access tracks between South Pillinge Farm and Rookery South Pit</u></a>	<a href="#"><u>Works for numbered work 6 to be installed in the street between the points marked L and M on the rights of way, streets and access plan.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Public Footpath 65</u></a>	<a href="#"><u>Works for numbered work 4A to be installed in the street between the points marked O and P on the rights of way, streets and access plan.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Houghton Lane</u></a>	<a href="#"><u>Works for numbered work 4A to be installed under the street between the points marked GG and HH on the rights of way, streets and access plan.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Public Footpath 7</u></a>	<a href="#"><u>Works for numbered work 4A to be installed in the street between the points marked JJ and KK on the rights of way, streets and access plan.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Access track leading from Houghton Lane to Park Farm</u></a>	<a href="#"><u>Works to upgrade the existing access (comprising numbered work 3B) and to place and maintain apparatus for use during construction and operation and works for numbered work 4A to be installed in the street between the points marked MM and NN on the rights of way, streets and access plan.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Houghton Lane</u></a>	<a href="#"><u>Works to upgrade the existing junction (comprising numbered work 3B) for use during construction and operation between the points marked OO and PP on the rights of way, streets and access plan.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Access track leading from Houghton Lane to Park Farm</u></a>	<a href="#"><u>Works to enable the creation of an access (comprising numbered work 3B) for use during operation between the points marked QQ and RR on the rights of way, streets and access plan.</u></a>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street Subject to Street Works</u>	<u>(3)</u> <u>Description of the street works</u>
<u>Central Bedfordshire Council</u>	<u>Access track leading from Houghton Lane to Park Farm</u>	<u>Works to enable the creation of an access (comprising numbered work 3B) for use during construction between the points marked RR and NN on the rights of way, streets and access plan.</u>
<u>Central Bedfordshire Council</u>	<u>low level restoration scheme secondary access track</u>	<u>Works for numbered work 4A to be installed in the street between the points marked BB and CC on the rights of way, streets and access plan.</u>
<u>Central Bedfordshire Council</u>	<u>low level restoration scheme secondary access track</u>	<u>Works for numbered work 4A to be installed in the street between the points marked CC and DD on the rights of way, streets and access plan.</u>



ACCESSPART 1THOSE PARTS OF THE ACCESSES TO BE MAINTAINED AT THE PUBLIC EXPENSE**Table 6**

<u>(1)</u> <u>Location</u>	<u>(2)</u> <u>Street</u>	<u>(3)</u> <u>Description of relevant part of access</u>
<u>Central Bedfordshire Council</u>	<u>Green Lane</u>	<u>The signage and markings installed in the area hatched blue between points A and B as shown on the rights of way, streets and access plan.</u>
<u>Bedford Borough Council</u>	<u>Green Lane</u>	<u>The signage and markings installed in the area hatched magenta between points A and B as shown on the rights of way, streets and access plan.</u>
<u>Central Bedfordshire Council</u>	<u>Houghton Lane</u>	<u>The upgraded access constituting part of numbered work 3B and shown on the rights of way, streets and access plan hatched blue between points OO and PP.</u>

## PART 2

### THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

**Table 7**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of access</i>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Green Lane</u></a>	<a href="#"><u>The access constituting part of numbered work 2A and shown on the rights of way, streets and access plan hatched red between points C and D.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Access Road serving Rookery North and South Pits</u></a>	<a href="#"><u>The access constituting part of numbered work 2A and shown on the rights of way, streets and access plan hatched red between points E and F.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Access Road serving Rookery North and South Pits</u></a>	<a href="#"><u>The access constituting part of numbered work 2A and shown on the rights of way, streets and access plan hatched red between points F and G.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Access Road serving Rookery North and South Pits</u></a>	<a href="#"><u>The access constituting part of numbered work 2 and shown on the rights of way, streets and access plan hatched red between points G and I.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>Access track leading from Houghton Lane to Park Farm</u></a>	<a href="#"><u>The access constituting part of numbered work 3B and shown on the rights of way, streets and access plan hatched red between points MM and NN.</u></a>
<a href="#"><u>Central Bedfordshire Council</u></a>	<a href="#"><u>low level restoration scheme secondary access track</u></a>	<a href="#"><u>The access to the sealing end compounds constituting part of numbered work 6 to be provided within the area shown on the rights of way, streets and access plan hatched orange.</u></a>

### PART 3

#### THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

Table 8

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>Central Bedfordshire Council</u>	<u>Access track leading from Houghton Lane to Park Farm</u>	<u>The creation of a temporary access comprising part of numbered work 3B and shown on the rights of way, streets and access plan hatched red between points marked RR and NN to provide temporary access to numbered work 3A.</u>
<u>Central Bedfordshire Council</u>	<u>Houghton Lane</u>	<u>Creation of temporary access comprising part of numbered word 4A between the points marked GG and HH on the rights of way, streets and access plan to provide construction access both north and south of Houghton Lane.</u>

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF  
STREETS

Table 9

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	Green Lane	<p><b>Prohibition/Restriction:</b> From the points marked A to B on the rights of way, streets and access plan being approximately 250m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Bedford Borough Council	Green Lane	<p><b>Prohibition/Restriction:</b> From the points marked A to B on the rights of way, streets and access plan being approximately 250m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and partial restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	Access Road serving Rookery North and South Pits including footpath(s)	<p><b>Prohibition/Restriction:</b> From the points marked E to F on the rights of way, streets and access plan being approximately 90m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and partial restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Central Bedfordshire Council	Access Road serving Rookery North and South Pits including footpath(s)	<p><b>Prohibition/Restriction:</b> From the points marked F to G on the rights of way, streets and access plan being approximately 700m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and partial restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Central Bedfordshire Council	Access Road serving Rookery North and South Pits including footpath(s)	<p><b>Prohibition/Restriction:</b> From the points marked G to H on the rights of way, streets and access plan being approximately 785m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and partial restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>

<i>(1)</i> Area	<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>
Central Bedfordshire Council	Established agricultural access tracks between South Pillinge Farm and Rookery South Pit	<p><b>Prohibition/Restriction:</b> From the points marked J to K on the rights of way, streets and access plan being approximately 132m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered works 5, 6 and 7.</p>
Central Bedfordshire Council	Established agricultural access tracks between South Pillinge Farm and Rookery South Pit	<p><b>Prohibition/Restriction:</b> From the points marked L to M on the rights of way, streets and access plan being approximately 100m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered works 5, 6 and 7.</p>
Central Bedfordshire Council	Public Footpath 65	<p><b>Prohibition/Restriction:</b> From the points marked N to O on the rights of way, streets and access plan being approximately 10m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	Public Footpath 65	<p><b>Prohibition/Restriction:</b> From the points marked O to P on the rights of way, streets and access plan being approximately 30m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 65	<p><b>Prohibition/Restriction:</b> From the points marked P to Q on the rights of way, streets and access plan being approximately 10m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Layby on Station Road	<p><b>Prohibition/Restriction:</b> From the points marked R to S on the rights of way, streets and access plan being approximately 25m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction and then removal of numbered work 7.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	Station Lane	<p><b>Prohibition/Restriction:</b> From the points marked T to U on the rights of way, streets and access plan being approximately 195m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction and then removal of numbered work 7.</p>
Central Bedfordshire Council	Public Footpath 7 and low level restoration scheme secondary access track	<p><b>Prohibition/Restriction:</b> From the points marked V to W on the rights of way, streets and access plan being approximately 20 m</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and public footpath and restriction of the use of the street and public footpath in order to facilitate the construction and then removal of numbered work 7 and the construction of numbered work 6.</p>
Central Bedfordshire Council	Public Footpath 14	<p><b>Prohibition/Restriction:</b> From the points marked X to Y on the rights of way, streets and access plan being approximately 168m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction and then removal of numbered work 7 and the construction of numbered work 6.</p>



<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	low level restoration scheme secondary access track	<p><b>Prohibition/Restriction:</b> From the points marked BB to DD on the rights of way, streets and access plan being approximately 260m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the track and restriction of the use of the track (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Central Bedfordshire Council	Established agricultural access track adjacent to plantation leading from Station Lane	<p><b>Prohibition/Restriction:</b> From the points marked EE to FF on the rights of way, streets and access plan being approximately 140m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered works 6 and 7.</p>
Central Bedfordshire Council	Houghton Lane	<p><b>Prohibition/Restriction:</b> From the points marked GG to HH on the rights of way, streets and access plan being approximately 30m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered work 4A.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	Public Footpath 7	<p><b>Prohibition/Restriction:</b> From the points marked II to JJ on the rights of way, streets and access plan being approximately 32m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 7	<p><b>Prohibition/Restriction:</b> From the points marked JJ to KK on the rights of way, streets and access plan being approximately 35m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 7	<p><b>Prohibition/Restriction:</b> From the points marked KK to LL on the rights of way, streets and access plan being approximately 12m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	<p><b>Prohibition/Restriction:</b> From the points marked MM to NN on the rights of way, streets and access plan being approximately 155m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered work 3 and numbered work 4.</p>
Central Bedfordshire Council	Houghton Lane	<p><b>Prohibition/Restriction:</b> From the points marked OO to PP on the rights of way, streets and access plan being approximately 25m.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street (including the use of traffic management measures) in order to facilitate the construction of numbered work 3.</p>

SCHEDULE 7

Article 12

STREETS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
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**Schedule D**  
**Streets to be Temporarily Stopped Up**

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
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**Schedule F**  
**Land of which Only Subsoil More than 9 Metres Beneath Surface may be Acquired**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>
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**Schedule G**  
**Land of which Temporary Possession may be Taken**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>	
Central Bedfordshire Council	low level restoration scheme secondary access track	From the points marked Z to AA on the rights of way, streets and access plan being approximately 110m.	Commencing at point Z and finishing at point AA using a route within the area marked with orange hatching on the rights of way, streets and access plan.	

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

*Compensation enactments*

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

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

(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(2)—

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

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A (5A) (relevant valuation date) of the 1961 Act, for (a) and (b) substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act; and
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 9 of Schedule 8 to the Millbrook Gas Fired Generating Station Order 201[X]) to acquire an interest in the land, and”

*Application of the 1965 Act*

4.—(1) For the purposes of Article 25 only the 1965 Act is subject to the modifications in sub-paragraph 3(2).

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

5. 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);

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(a) 1973 c.26.

(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 acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

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

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

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

9. For schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

### Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

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

### Counter-notice requiring purchase of land

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

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

### Response to counter-notice

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

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

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

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

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

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

### **Determination by Upper Tribunal**

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

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

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

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

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

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

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

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

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”



LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 10**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the Authorised project</i>
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**Part 2**

**Streets for which No Substitute is to be Provided**

	<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>
<u>Land forming part of disused clay pit (Rookery Pit) situated to the south of Green Lane and east of South Pilling Farm, Millbrook</u>	<u>1A PGP</u>	<u>Temporary use (including the installation and use of site office and welfare facilities) to facilitate numbered work 8</u>	<u>Numbered work 8</u>	
<u>Land forming part of disused clay pit (Rookery Pit) situated to the south of Green Lane and north east of South Pilling Farm, Millbrook</u>	<u>1B PGP</u>	<u>Temporary use (including the installation and use of site office and welfare facilities) to facilitate numbered work 8</u>	<u>Numbered work 8</u>	

<a href="#"><u>Land forming part of disused clay pit (Rookery Pit) situated to the south of Green Lane and north east of South Pillinge Farm, Millbrook</u></a>	<a href="#"><u>5A_PGP</u></a>	<a href="#"><u>Temporary use to facilitate construction for numbered work 2A</u></a>	<a href="#"><u>Numbered work 2A</u></a>
<a href="#"><u>Land and access track situated to the west of premises known as Moreteyne House and south of Station Lane crossing, Millbrook</u></a>	<a href="#"><u>1_EC</u></a>	<a href="#"><u>Temporary use to facilitate construction for numbered works 6 and 7</u></a>	<a href="#"><u>Part of numbered works 6 and 7</u></a>
<a href="#"><u>Land forming part of electricity compound overhead transmission lines and pylon situated to the south of premises known as Moreteyne House, Millbrook</u></a>	<a href="#"><u>2_EC</u></a>	<a href="#"><u>Temporary use (including the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line)to facilitate construction for numbered works 6 and 7</u></a>	<a href="#"><u>Part of numbered works 6 and 7</u></a>
<a href="#"><u>Land forming part of Millbrook Vehicle Proving Ground and electricity transmission lines situated south of premises known as Moreteyne House, Millbrook, Millbrook</u></a>	<a href="#"><u>3_EC</u></a>	<a href="#"><u>Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7</u></a>	<a href="#"><u>Part of numbered works 6 and 7</u></a>

<p><u>Land forming part of public adopted highway known as Statin Lane, part lay-by and overhead electricity transmission lines situated to the east of the Millbrook Vehicle Proving Ground and south of Pilling Cottages, Millbrook</u></p>	<p><u>4_EC</u></p>	<p><u>Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7</u></p>	<p><u>Part of numbered works 6 and 7</u></p>
<p><u>Land forming part of agricultural land and overhead electricity transmission lines and pylon situated to the east of Station Lane and south of South Pilling Farm, Millbrook</u></p>	<p><u>5_EC</u></p>	<p><u>Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7</u></p>	<p><u>Part of numbered works 6 and 7</u></p>
<p><u>Land forming part of disused clay pit (Rookery Pit) situated to the east of South Pilling Farm, Millbrook</u></p>	<p><u>10_EC</u></p>	<p><u>Temporary use to facilitate construction for numbered works 5 and 6</u></p>	<p><u>Part of numbered works 5 and 6</u></p>

<p><u>Land forming part of disused clay pit (Rookery Pit) and overhead electricity transmission lines and access track situated to the east of South Pilling Farm, Millbrook</u></p>	<p><u>11 EC</u></p>	<p><u>Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch, the oversailing for the temporary diversion of the existing 400kV transmission line and the passing and re-passing of users of public footpaths) to facilitate construction for numbered works 6 and 7</u></p>	<p><u>Part of numbered work 6 and 7</u></p>
<p><u>Land forming part of agricultural land, part of public footpath 14, overhead electricity transmission lines and pylon situated to the east of Station Lane, Millbrook</u></p>	<p><u>13 EC</u></p>	<p><u>Temporary use (including the installation and use of a cable winch, the oversailing for the temporary diversion of the existing 400kV transmission line and the passing and re-passing of users of public footpaths) to facilitate construction for numbered works 6 and 7</u></p>	<p><u>Part of numbered work 6 and 7</u></p>
<p><u>Land forming part of agricultural land, CLH pipeline system, overhead electricity transmission lines and pylon situated to the north east of Station Lane, Millbrook</u></p>	<p><u>14 EC</u></p>	<p><u>Temporary use (including the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7</u></p>	<p><u>Part of numbered works 6 and 7</u></p>

<a href="#"><u>Land forming part of disused pit (Rookery Pit), tracks , woodland and part of public footpath 15 situated to the west of Midland Main Line Railway north of public footpath 15, Millbrook</u></a>	<a href="#"><u>1A_GC</u></a>	<a href="#"><u>Temporary use (including the passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A</u></a>	<a href="#"><u>Part of numbered work 4A</u></a>
<a href="#"><u>Land forming part of disused pit (Rookery Pit), tracks , woodland and part of public footpath 15 situated to the west of Midland Main Line Railway north of public footpath 15, Millbrook</u></a>	<a href="#"><u>1B_GC</u></a>	<a href="#"><u>Temporary use (including the passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A</u></a>	<a href="#"><u>Part of numbered work 4A</u></a>
<a href="#"><u>Land forming part of agricultural land, overhead electricity transmission lines and CLH pipeline system situated to the north east of Lower Farm, Millbrook</u></a>	<a href="#"><u>7A_GC</u></a>	<a href="#"><u>Temporary use (including installation and use of welfare facilities, use as a construction compound and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A</u></a>	<a href="#"><u>Part of numbered work 4A</u></a>
<a href="#"><u>Land forming part of agricultural land, overhead electricity transmission lines and CLH pipeline system situated to the north east of Lower Farm, Millbrook</u></a>	<a href="#"><u>7B_GC</u></a>	<a href="#"><u>Temporary use (including installation and use of welfare facilities, use as a construction compound and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A</u></a>	<a href="#"><u>Part of numbered work 4A</u></a>

<a href="#"><u>Land forming part of agricultural land and part of public footpath 7 situated to the north east of Lower Farm, Millbrook</u></a>	<a href="#"><u>9A_GC</u></a>	<a href="#"><u>Temporary use (including the installation and use of welfare facilities and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A</u></a>	<a href="#"><u>Part of numbered work 4A</u></a>
<a href="#"><u>Land forming part of agricultural land and part of public footpath 7 situated to the north east of Lower Farm, Millbrook</u></a>	<a href="#"><u>9B_GC</u></a>	<a href="#"><u>Temporary use (including the installation and use of welfare facilities and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A</u></a>	<a href="#"><u>Part of numbered work 4A</u></a>
<a href="#"><u>Land forming part of access track situated to the east of Lower Farm, Millbrook</u></a>	<a href="#"><u>9C_GC</u></a>	<a href="#"><u>Temporary use to facilitate construction for numbered works 3 and 4</u></a>	<a href="#"><u>Part of numbered works 3 and 4</u></a>
<a href="#"><u>Land forming part of agricultural land situated to the south east of Lower Farm, Millbrook</u></a>	<a href="#"><u>12A_GC</u></a>	<a href="#"><u>Temporary use (including the installation and use of site office and welfare facilities) to facilitate construction for numbered works 3 and 4</u></a>	<a href="#"><u>Part of numbered works 3 and 4</u></a>
<a href="#"><u>Land forming part of agricultural land situated to the south east of Lower Farm, Millbrook</u></a>	<a href="#"><u>12B_GC</u></a>	<a href="#"><u>Temporary use (including the installation and use of site office and welfare facilities) to facilitate construction for numbered works 3 and 4</u></a>	<a href="#"><u>Part of numbered works 3 and 4</u></a>

PROTECTIVE PROVISIONSPART 1FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this part of this Schedule (save for National Grid which is protected by Part 3 of this Schedule, EPN which is protected by Part 4 of this Schedule, Anglian Water which is protected by Part 5 of this Schedule and Covanta which is protected by Part 7 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. 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(b)), 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;

(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(c);

(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(d) 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

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(a) The protective provisions within this Schedule are draft protective provisions and are being discussed with the relevant statutory undertakers. EPN has confirmed that the provisions set out in Part 4 of this Schedule are agreed.

(b) 1989 c.29: Section 64 was amended by the Utilities Act 2000 (c.27); Schedule 6, paragraph 38(3). There are other amendments to this section that are not relevant to this Order.

(c) 1991 c.56. Section 51A to the 1991 Act was inserted by section 92(1) of the Water Act 2003(c.37) and amended by sections 10(2)(a), 10(2)(b) and 10(2)(c) of the Water Act 2014 (c.21).

(d) 1991 c.56. Section 102 was amended by sections 96(1)(a), 96(1)(b), 96(1)(c), 96(1)(d) and 96(1)(e) of the Water Act 2003 c.37 and paragraph 90 of Schedule 7 to the Water Act 2014 c.21.

“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(a);
- (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.

3. 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.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (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.

5. 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.

6.—(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 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 43 (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 43 (arbitration),

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(a) 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). Section 48 was amended by paragraph 2(1) of Schedule 6 to the Gas Act 1995 (c.45).



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.

7.—(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 43 (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.

8.—(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 (3), 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 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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.

9.—(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 6(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 43 (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.

(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 6(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.

10.—(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 6(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.

11. 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 2  
FOR THE PROTECTION OF OPERATORS OF ELECTRONIC  
COMMUNICATIONS CODE NETWORKS

12.—(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(a);

“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)(b) 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;

“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.

13. The exercise of the powers of article 30 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(c) (undertaker’s works).

14.—(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,

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.

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(a) 2003 c.21.

(b) Paragraph 1(3A) of Schedule 2 of the Telecommunications Act 1984 (c.12) was inserted by section 106(2) of, and paragraph 4 of Schedule 3 to, the Communications Act 2003.

(c) 1984 c.12. Paragraph 23 of Schedule 2 was amended by sections 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190 and 193(1) of, and paragraph 68 of Schedule 25, paragraphs 3(1)(2), 17, 40(4), 57(6) and 58 of Schedule 26 and part 1 of Schedule 27 to, the Water Act 1989 (c.15), sections 112(3) and (4) of, and paragraph 35(1) of Schedule 17 and Schedule 18 to, the Electricity Act 1989 (c.29), and section 106(2) of, and paragraphs 5(a), 5(d) and 8 of Schedule 3 to, the Communications Act 2003.

(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 43 (arbitration).

**15. 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.

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

PART 3  
FOR THE PROTECTION OF NATIONAL GRID

Application

17. 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

18. 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

- (a) electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid;
- (b) 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;

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

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

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

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

“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 either—

- (a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; or
- (b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH,

as the context shall require.

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(a) 1989 c.29.

19. Except for paragraphs (20) (apparatus in streets subject to temporary prohibition or restriction), (24) (retained apparatus: protection), (25) (retained apparatus: protection), (26) (expenses) and (27) (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**

20.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 12 (stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 11 (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**

21.—(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.

(3) Any agreement or consent granted by National Grid under paragraph 24 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 21(1).

#### **Removal of apparatus**

22.—(1) If, in the exercise of the agreement reached in accordance with paragraph (21) 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 (2) to (5) inclusive.

(2) 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 (3), afford to National Grid to their satisfaction (taking into account paragraph 23(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.

(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, 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.

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

(5) 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 (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.



### Facilities and rights for alternative apparatus

23.—(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 under paragraph 31 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 43 (arbitration) of the Order shall apply.

### Retained apparatus: protection of National Grid as Gas Undertaker

24.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works specified in National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" that are within the proximities described therein to any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) or otherwise, the undertaker must submit to National Grid a plan.

(2) In relation to works which will be situated on, over, under or within 15 metres measured in any direction of any apparatus to which sub-paragraph (1) applies, or (wherever situated) impose any load directly upon any such apparatus or involve embankment works within 15 metres of any such apparatus, the plan to be submitted to National Grid under sub-paragraph (1) shall 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 etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22".)

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

(4) Any approval of National Grid required under sub-paragraph (3)—

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

(5) In relation to a work to which sub-paragraphs (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of

securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub paragraph (4), 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), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (17) to (19) and (22) to (23) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

(9) Nothing in this paragraph shall preclude 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 any works comprising the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

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

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

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

(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 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 26.

(13) The plans submitted to National Grid by the undertaker pursuant to paragraph 24(1) and/or paragraph 25(1) must be sent to [NAME] at [EMAIL ADDRESS] or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

### **Retained apparatus: protection of National Grid as Electricity Undertaker**

25.—(1) Not less than 56 days before the commencement of any authorised development under this Order that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) or otherwise and to which sub-paragraph (2)(i) or (2)(ii) applies, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted under sub-paragraph (1) shall 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;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

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

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

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

(5) Any approval of National Grid required under sub-paragraph (1), (2) or (3)—

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

(6) In relation to a work to which sub-paragraphs (1), (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (6), 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), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1), (2), (3) or (6) (except in an emergency)

(9) If National Grid in accordance with sub-paragraph (6) or (8) 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 (17) to (19) and (22) to (23) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

(10) Nothing in this paragraph shall preclude 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 any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

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

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

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

(13) This paragraph shall not apply to numbered work 7.

## **Expenses**

26.—(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 National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative 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 22(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this 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 43 (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

27.—(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 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 this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not 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 3(b) shall be subject to the full terms of this Schedule including this paragraph (27) 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 be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph (27) applies. If requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph (27) for claims reasonably incurred by National Grid.

### **Enactments and agreements**

28. 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**

29. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 22(2) and paragraphs (24) or (28)) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party’s operations.

### **Access**

30. If in consequence of the agreement reached in accordance with paragraph 21(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**

31. Save for differences or disputes arising under paragraphs 22(2), 22(4), 23(1), 24 and 25 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 43 (arbitration) of the Order.

## PART 4

### FOR THE PROTECTION OF EPN(a)

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

33. In this part of this Schedule—

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

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

“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

“EPN” means Eastern Power Networks plc (Company No. 02366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP;

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

35. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), EPN 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.

36. 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.

37.—(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 EPN’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of EPN 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 EPN 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 EPN 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 EPN reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to EPN 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, EPN must, on receipt of a written notice to that effect from the

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(a) This Part is agreed with EPN.

(b) 1989 c.29.

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 provided that this obligation shall not require EPN to exercise any power it may have to acquire any land or rights by compulsory purchase order.

(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 EPN and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) EPN must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43 (arbitration), and after the grant to EPN 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 EPN 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 EPN, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of EPN.

(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.

**38.—**(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to EPN 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 EPN or in default of agreement settled by arbitration in accordance with article 43 (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 EPN 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 EPN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**39.—**(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 37(2), the undertaker must submit to EPN 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 EPN for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and EPN is entitled to watch and inspect the execution of those works.

(3) Any requirements made by EPN 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 EPN 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 (32) to (38) apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(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 EPN 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.

40.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to EPN the reasonable expenses incurred by EPN 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 37(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 43 (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 EPN by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 37(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 EPN 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 EPN 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.

41.—(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 37(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 EPN, or there is any interruption in any service provided, or in the supply of any goods, by EPN, the undertaker must—

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

(b) indemnify EPN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from EPN,

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 EPN, its officers, servants, contractors or agents.

(3) EPN 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.

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

## PART 5

### FOR THE PROTECTION OF ANGLIAN WATER

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

44. In this Part of this schedule—

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

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

(a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act(a).

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

“functions” includes powers and duties;

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

“plan” includes sections, drawings, specifications and method statements.

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

46.—(1) The undertaker must not interfere with, build over or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus: 2.25 metres where the diameter of the pipe is less than 150 millimetres; 3 metres where the diameter of the pipe is between 150 and 450 millimetres; 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and 6 metres where the diameter of the pipe exceeds 750 millimetres, unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out the authorised development on behalf of the undertaker.

47. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

(a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 (a) or other legislation and any other associated consents are

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(a) 1991 c.56. Section 102(4) was amended by paragraph 90 of Schedule 7 to the Water Act 2014 (c.21) and section 96(1)(c) of the Water Act 2003 (c.37); Section 104 was amended by section 96(4)(a), (b), (c) and (d), and paragraph 1 of Schedule 9(3) to the Water Act 2003 (c.37), section 42(3) of the Water Management Act 2010 and by sections 11(2)(a), 11(2)(b) and 11(2)(c) of the Water Act 2014 (c.21).

obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and

- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

48. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which Apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction in a timely manner, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus or provide alternative apparatus.

49. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 43 (arbitration).

50. If the undertaker is unable to create the new rights referred to in paragraph (49), Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible, use its reasonable endeavours to obtain the necessary rights.

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

52. In consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

53. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 46, 47 and 48 and 52 above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker shall—

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

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

54.—(1) Nothing in paragraph 53 imposes any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Anglian Water, its officers' servants, contractors or agents.

(2) Anglian Water must give the undertaker reasonable notice of any claim or demand pursuant to paragraph 53 and must consider its representations before proceeding further in respect of the claim or demand.

(3) Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any claim, costs, expenses, loss, demands and penalties pursuant to paragraph 53. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how the claim has been minimised

55. Any difference or dispute arising between the undertaker and Anglian Water under this schedule must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 43 (arbitration).

## PART 6

### FOR THE PROTECTION OF COVANTA ROOKERY SOUTH LIMITED

56. For the protection of Covanta Rookery South Limited (Company No. 07094843) as referred to in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Covanta.

57. In this part of this Schedule—

“Covanta” means Covanta Rookery South Limited (Company No. 07094843) whose registered office is at 20-22 Bedford Row London WC1R 4JS;

“Covanta section 106 agreement” means the deed made pursuant to section 106 of the Town and Country Planning Act 1990 relating to the land at Rookery South Pit, Stewartby, Bedfordshire, between Bedford Borough Council, Central Bedfordshire Council and O&H Q7 Limited and Covanta Energy Limited and Covanta;

“the Millbrook authorised development” means the development authorised by this Order;

“the Millbrook Order land” means the land or any part of it shown as falling within the Order limits;

“rail facility” has the same meaning as in the Covanta section 106 agreement;

“rail land” has the same meaning as in the Covanta section 106 agreement;

“the respective authorised developments” means the Rookery authorised development and the Millbrook authorised development”

“the Rookery Order” means the Rookery South (Resource Recovery Facility) Order 2011;

“Rookery limits of deviation” means the areas of the Rookery Order land in respect of which the Rookery authorised development may be constructed, in accordance with Article 3(2) of the Rookery Order;

“the Rookery Order land” means the land or any part of it shown as falling within the Rookery Order limits;

“the Rookery authorised development” means the development authorised by the Rookery Order;

“specified land” means the above-ground areas of land in which numbered works 4, 6 and 7 are proposed to be located;

“specified planting” means either—

(a) the planting shown on the outline landscaping plan numbered 2.31B as certified by the Secretary of State pursuant to the Rookery South Order; or

(b) the landscaping that has been approved pursuant to requirement 8 of the Rookery Order and is proposed to be planted on the specified land.

### Co-operation during construction

58. The undertaker shall not submit written details for Option 2A or 2B (as the case may be) for approval to the relevant planning authority in accordance with requirement 2(2) (highway access) without first consulting with Covanta in respect of the route, siting and location of Option 2A or 2B (as the case may be).

59. In the event that the undertaker commences the authorised development in advance of Covanta commencing the Rookery authorised development then the undertaker shall not submit a written strategy for landscaping and ecological mitigation for numbered work 6 or for numbered work 7 for approval to the relevant planning authority in accordance with requirement 3 (provision of landscaping and ecological mitigation) without first consulting with Covanta regarding replacement of the specified planting (“replacement planting”) within the Millbrook

Order land and using reasonable endeavours to include the replacement planting in the undertaker's written strategy for landscaping and ecological mitigation that is submitted for approval pursuant to requirement 3.

60. The undertaker shall not exercise powers pursuant to articles 9 (street works), 10 (construction and maintenance of new or altered means of access) or 11 (temporary prohibition or restriction of use of streets) over land within the Rookery limits of deviation without first consulting with Covanta.

61. Insofar as the construction of the Millbrook authorised development is or may be undertaken concurrently with the Covanta authorised development, the undertaker shall co-operate with Covanta with a view to ensuring—

- (a) the co-ordination of construction programming and the carrying out of works; and
- (b) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Covanta and their respective contractors.

MODIFICATIONS TO AND AMENDMENTS OF THE ROOKERY  
SOUTH (RESOURCE RECOVERY FACILITY) ORDER 2011

Article 33 to the Rookery South (Resource Recovery Facility) Order 2011

1. In the title to Article 33, after the words “Protection of Network Rail Infrastructure Limited” insert the words “and Millbrook Power Limited”.

2. After the words “Schedule 7” and before the words “Protection of Network Rail Infrastructure Limited” insert the words “Part 1”.

Schedule 7 to the Rookery South (Resource Recovery Facility) Order 2011

3. After paragraph 21 of Schedule 7 insert new Part 2—

“Part 2

PROTECTION OF MILLBROOK POWER LIMITED

Application

22. The following provisions of this Part of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Millbrook Power.

Interpretation

23. In this part of this Schedule—

“approved landscaping and ecological mitigation works” means the undertaking of the works necessary in order to deliver the specified planting prior to the implementation of the Millbrook Order;

“the Millbrook access road land” means the land shown as plots 4 PGP, 5 PGP, 5A PGP, 6 PGP and 7 PGP on the land plans and described in the book of reference as certified by the Secretary of State pursuant to the Millbrook Order;

“the Millbrook Order” means the Millbrook Gas Fired Generating Station Order 201\*;

“the Millbrook Order land” means the land or any part of it shown as falling within the Millbrook Order limits, excluding the Millbrook access road land;

“Millbrook Power” means Millbrook Power Limited, (Company No. 08920458) whose registered office is at Drax Power Station, Drax, Selby, North Yorkshire YO58 8PH or any person having the benefit of the Millbrook Order pursuant to Article 6 and/or 7 thereof;

“Millbrook Order limits” has the same meaning as the term “Order limits” in Article 2(1) of the Millbrook Order;

“the Order” means this Order;

“the respective authorised developments” means the developments authorised by the Order and the Millbrook Order respectively;

“specified land” means the above-ground areas of land in which numbered works 4, 6 and 7 as consented by the Millbrook Order are proposed to be located; and

“specified planting” means the planting and other landscaping works that have been approved in February 2017 pursuant to requirement 8 of the Order under document



reference Application CB/16/04813/MWS (as regards Central Bedfordshire Council) and Application 16/03088/AOC (as regards Bedford Borough Council) that is proposed to be planted on the specified land;

### **Regulation of powers over the Millbrook access road land**

24. (1) If as a consequence of the powers granted under this Order access (with or without vehicles plant and machinery) to the Millbrook Order land is obstructed the undertaker shall provide such alternative means of access to the Millbrook Order land as will enable Millbrook Power to construct, use and maintain the development authorised by the Millbrook Order no less effectively than was possible before such obstruction.

(2) Subject to Millbrook Power complying with paragraph 58 of Part 7 of Schedule 10 to the Millbrook Order the undertaker shall not exercise the powers granted under this Order so as to hinder or prevent the construction, use or maintenance of numbered work 2 as authorised by the Millbrook Order without the prior written consent of Millbrook Power.

(3) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Millbrook Power, that approval or consent shall be in writing (and subject to such reasonable terms and conditions as Millbrook Power may require), but shall not be unreasonably withheld.

### **Regulation of powers over the Millbrook Order land**

25.—(1) The undertaker shall not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the Millbrook Order land otherwise than with the prior written consent of Millbrook Power.

(2) The articles referred to in sub-paragraph (1) are—

- (a) Article 10 (Street works);
- (b) Article 11 (public rights of way);
- (c) Article 12 (Temporary stopping up of streets);
- (d) Article 13 (Access to works);
- (e) Article 15 (Discharge of water);
- (f) Article 16 (Authority to survey and investigate land);
- (g) Article 17 (Compulsory acquisition of land);
- (h) Article 18 (Power to override easements and other rights);
- (i) Article 26 (Temporary use of land for maintaining authorised development);
- (n) Article 27 (Statutory undertakers); and
- (o) Article 31 (Felling or lopping of trees).

### **Co-operation**

26. Insofar as the construction of the respective authorised developments is or may be undertaken concurrently, the undertaker shall—

- (a) co-operate with Millbrook Power with a view to ensuring—
  - (i) the co-ordination of construction programming and the carrying out of works; and
  - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Millbrook Power and their respective contractors.
- (b) use reasonable endeavours to avoid any conflict arising between the carrying out of the respective authorised developments.

## Requirements

27. Insofar as compliance with paragraph 25(1) of this Part prevents the undertaker from complying with any requirement contained in Part 2 of Schedule 1 to the Order, the undertaker shall not be in breach of such requirement.

28. It shall be a defence for any person charged with an offence pursuant to section 161 of the Planning Act 2008 (Breach of terms of order granting development consent) to prove that they were not able to comply with a requirement contained in Part 2 of Schedule 1 to the Order due to the effect of paragraph 25 of this Part.”

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## SCHEDULE 12

Article 42

### 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 (8) 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) Subject to sub-paragraph (3), 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.

(3) Where—

- (a) an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order; and
- (b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved, then the application is to be taken to have been refused by the relevant planning authority 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 one (21) 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 planning authority does not give such notification within this twenty one (21) 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), paragraph 1(3) and paragraph 2.

## Appeals

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

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 1(3)) 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 article or requirement consultee (together with the undertaker, these are the “appeal parties”);
- (b) The Secretary of State must appoint a person within twenty (20) business days of 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 (20) business 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 (20) business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (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 thirty (30) business 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 five (5) 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 ten (10) days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(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 2 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) The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten (10) years' experience.

(11) Save where a direction is given pursuant to sub-paragraph (12) 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.

(12) 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 circular or 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.

## EXPLANATORY NOTE

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

This Order authorises Millbrook Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the new section of highway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 40 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ.

### **Schedule H**

#### **Deemed Consent Under Coast Protection Act 1949**

*[Insert details of deemed consent]*

### **Schedule I**

#### **Deemed Licence Under the Food and Environment Protection Act 1985**

*[Insert details of deemed licence]*

### **Schedule J**

#### **Trees Subject to Tree Preservation Orders**

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Type of tree</i>	<i>Number[reference] of tree shown on land plan</i>	<i>Work to be carried out</i>

## **NOTES**

### **Initial Commencement**

*Specified date*

*Specified date: 1 October 2009: see art 1.*