THE NATIONAL GRID ELECTRICITY TRANSMISSION PLC (GRAIN TO TILBURY) COMPULSORY PURCHASE ORDER 2024

CORE DOCUMENTS LIST

17.	Environmental Impact Assessment Screening Opinion (ref: 23/00681/SCR) dated 7 July 2023	2550 - 2557
18.	Marine Management Organisation request for NGET to withdraw its EIA screening dated 17th November 2023	2558 - 2559

C	COMPULSORY PURCHASE ORDER AND RELATED DOCUMENTS	Page(s)
1.	Order and Schedule	2563 - 2820
2.	Sealed CPO Plans	2821 - 2830
3.	Statement of Reasons	2831 - 2878
4.	Statement of Case	2879 - 2929
5.	Letter from Eversheds Sutherland to Department for Energy Security and Net Zero dated 4th March 2025 regarding minor modifications to PoTLL Land	2930 - 2931

D	OBJECTIONS	Page(s)
1.	Schedule of Objectors	2935
2.	Objection of Network Rail dated 29 November 2024	2936
3.	Objection of Denton Wharf Properties Limited dated 16 December 2024	2937
4.	Objection of Southern Gas Networks Plc dated 18 December 2024	2938 - 2939
5.	Objection of Port of Tilbury dated 20 December 2024	2940 - 2942
6.	Network Rail representation to Department of Transport dated 29th November 2024 Section 16 and Schedule 3, Part 11 of the Acquisition of Land Act 1981	2943
7.	Objection withdrawal letters	2944 - 2948

E	BOOK OF PLANS	Page(s)
1.	Red Line Boundary Plan to support planning application ref:20230668	2952 - 2958
2.	Red Line Boundary Plan to support planning application ref: 23/01502/FUL	2959 - 2965
3.	Tilbury Headhouse Site Plan	2966
4.	Tilbury Site access layout and parking Plan	2967
5.	Tilbury Headhouse proposed ground floor Plan	2968
6.	Tilbury Headhouse Sections Plan	2969
7.	Tilbury Headhouse Elevations Plan	2970
8.	Tilbury Construction Layout Plan	2971
9.	Gravesend Headhouse Proposed Sections Plan	2972
10.	Gravesend Headhouse Compound Block plan	2973
11.	Gravesend Headhouse proposed ground floor	2974
12.	Gravesend Headhouse Planning Site Plan	2975
13.	Gravesend Headhouse proposed elevations	2976
14.	Gravesend Construction Layout Plan	2977
15.	CDM Plans (Sheets 1 – 3)	2978 - 2980

F	MISCELLANEOUS	Page(s)
1.	Ofgem, TKRE - Decision on Early Construction Funding and Modification to special conditions of the electricity transmission licence, 21st October 2024	2984 - 3013
2.	Ofgem Decision on accelerating onshore electricity transmission investment, 15 December 2022	3014 - 3098
3.	National Grid Technical Guidance Note 287 - Third-party guidance for working near National Grid Electricity Transmission Equipment	3099 - 3110
4.	National Grid Code of Practice - Construction Best Practice for Overhead Line Installation December 2021	3111 - 3118
5.	National Grid Land Rights Strategy and Payment Schedule for Assets, Version 1	3119 - 3122
6.	Port of Tilbury (Expansion) Order 2019 and General Vesting Declaration dated 20th December 2023	3123 - 3289
7.	Glossary	3290 - 3292

Consultation

Making a positive difference for energy consumers

Statutory consultation on Tilbury Grain Kingsnorth Upgrade Project (TKRE) application and corresponding proposed modification to Special Condition 3.41 of NGET's electricity transmission licence

Publication date:	13 August 2024
Response deadline:	10 September 2024
Contact:	Lina Apostoli
Team:	Price Control Operations - Large Transmission Project Delivery
Telephone:	020 7901 7000
Email:	RIIOElectricityTransmission@ofgem.gov.uk

We are consulting on our minded-to position on the Early Construction Funding (ECF) submission application by National Grid Electricity Transmission (NGET) for the Tilbury Grain Kingsnorth Upgrade Project (TKRE), Special Condition (SpC) 3.41 'Accelerated strategic transmission investment Re-opener and Price Control Deliverable term ($ASTIR_t$)'. We are also consulting on our corresponding proposed modification to adjust the term $ASTIA_t$ referenced in Appendix 1 of Spc 3.41.

We would like views from people with an interest in new transmission infrastructure, meeting the net zero challenge, and competition in onshore transmission networks. We particularly welcome responses from consumer groups, stakeholders impacted by the project, stakeholders with an interest in the costs of electricity transmission infrastructure, and transmission owners. We would also welcome responses from other stakeholders and the public.

This document outlines the scope, purpose, and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at ofgem.gov.uk/consultations.

Any enquiries related to the text of this publication should be sent to Ofgem at:

10 South Colonnade, Canary Wharf, London, E14 4PU.

This publication is available at www.ofgem.gov.uk. Any enquiries regarding the use and re-use of this information resource should be sent to: psi@nationalarchives.gsi.gov.uk

Contents

Executive summary

Under National Grid Electricity Transmission (NGET) licence, Special Condition (SpC) 3.41 'Accelerated Strategic Transmission Investment Re-opener and Price Control Deliverable term (ASTIRt)' - Part C: Early Construction Funding we can provide Transmission Owners (TOs) with Early Construction Funding (ECF). ECF may not exceed 20% of the total forecast project cost listed in the ASTI Confidential Annex (except in exceptional circumstances) in order to enable permitted early construction activities that are required to accelerate projects ahead of receiving planning permission. The permitted[1] early construction activities are:

- Strategic land purchases
- Early enabling works
- Early procurement commitments
- Other activities approved in advance by Ofgem.

As part of the ECF re-opener mechanism, we will undertake a high-level assessment of the proposed early construction activities to determine whether costs are reasonable, within the stated 20% threshold of total forecasted project cost and are in line with the mechanism's purpose. We will not undertake a detailed cost assessment at this stage, and we will not form a view on whether the proposed expenditure is efficient. We will undertake this as part of a full cost assessment, including early construction costs, at the Accelerated Strategic Transmission Investment (ASTI) Project Assessment (PA) stage.

In August 2023, in line with SpC 3.41.9[2] and the ASTI Guidance and Submission Requirements Document,[3] NGET submitted the required minimum eight week advance notice that it was going to make an ECF application regarding TKRE.[4] This application[5] was made on 05 April 2024.

[1] Decision to modify the special licence conditions in the electricity transmission licences: Accelerated Strategic Transmission Investment, Accelerated Strategic Transmission Investment Guidance And Submission Requirements Document, paragraph 4.13
[2] Licences and licence conditions, Electricity licences and conditions, Transmission Licence, National Grid Electricity Transmission – Special Conditions
[3] Decision to modify the special licence conditions in the electricity transmission licences: Accelerated Strategic Transmission Investment, Accelerated Strategic Transmission Investment Guidance And Submission Requirements Document, paragraph 3.12
[4] See paragraph 1.1
[5] See paragraph 2.2

Our minded-to position is to amend the allowances set out for this project in Appendix 1 ($ASTIA_t$) of SpC 3.41 'Accelerated strategic transmission investment Re-opener and Price Control Deliverable term ($ASTIR_t$)' in NGET's electricity transmission licence (the Licence) to reflect NGET's full ECF expenditure request. The term will have the value given in the corresponding updated version of the ASTI Confidential Annex. The statutory notice of our proposed modification to adjust the $ASTIA_t$ term as referenced in Appendix 1 of SpC 3.41 is included in Appendix 1 of this consultation.

Next steps

We welcome responses to our consultation on the specific questions we have included in Chapter 2. If you would like to respond to this document, then please send your responses to: RIIOElectricityTransmission@ofgem.gov.uk. The deadline for responses is 10 September 2024. We aim to publish our ECF decision and the decision to modify NGET's licence later in the summer.

1. Consultation

What are we consulting on

1.1 This document sets out our minded-to position on NGET's ECF application for ASTI project with Network Options Assessment (NOA)[6] code TKRE.

1.2 Chapter 2 summarises our view on the ECF application for the project at this stage and our minded-to decision. Our consultation questions are:

- Q1: Do you agree with our minded-to position to provide ECF for the TKRE project?
- Q2: Do you agree with our proposed modification to adjust $ASTIA_t$ in Appendix 1 of SpC 3.41?

1.3 Our assessment and minded-to position set out in this document are subject to our consideration of any consultation responses and we invite stakeholders to respond using the contact details set out on the front of this document.

Related publications

1.4 Decision on accelerating onshore electricity transmission investment: Ofgem.gov.uk/publications/decision-accelerating-onshore-electricity-transmission-investment

1.5 Decision to modify the special licence conditions in the electricity transmission licences and corresponding Associated Document: Accelerated Strategic Transmission Investment, Accelerated Strategic Transmission Investment Guidance And Submission Requirements Document: Ofgem.gov.uk/publications/decision-modify-special-licence-conditions-electricity-transmission-licences-accelerated-strategic-transmission-investment

[6] Network Options Assessment (NOA)

Consultation stages

Stage 1	Stage 2	Stage 3	Stage 4	Stage 5
Consultation open	Consultation closes (awaiting decision). Deadline for responses	Responses reviewed and published	Licence modification decision	licence modifications come into effect
1**3 August 2024**	10 September 2024	Autumn 2024	Autumn 2024	56 days after the licence modification decision[7]

How to respond

1.6 We want to hear from anyone interested in this consultation. Please send your response to the person or team named on this document's front page.

1.7 We have asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

1.8 We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations

Your response, data and confidentiality

1.9 You can ask us to keep your response, or parts of your response, confidential. We will respect this, subject to obligations to disclose information such as under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

1.10 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those

[7] Section 11A(9) of the Electricity Act 1989

that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we will get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

1.11 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations contained within Appendix 4.

1.12 If you wish to respond confidentially, we will keep your response confidential, but we will publish the number (but not the names) of confidential responses we receive. We will not link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

General feedback

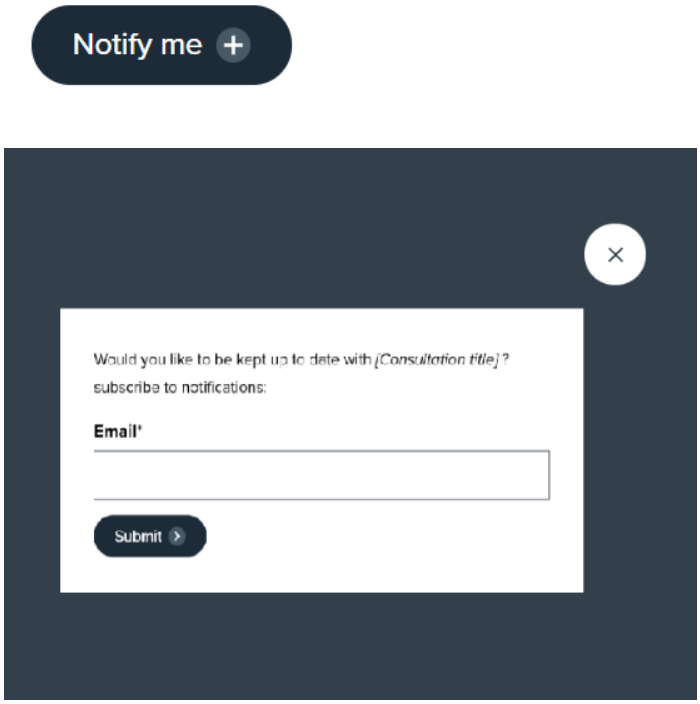
1.13 We believe that consultation is at the heart of good policy development. We welcome any comments about how we have run this consultation. We would also like to get your answers to these questions:

1) Do you have any comments about the overall process of this consultation?
2) Do you have any comments about its tone and content?
3) Was it easy to read and understand? Or could it have been written better?
4) Were its conclusions balanced?
5) Did it make reasoned recommendations for improvement?
6) Any further comments?

1.14 Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

1.15 You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website, Ofgem.gov.uk/consultations



1.16 Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

1.17 **Upcoming > Open > Closed (awaiting decision) > Closed (with decision)**

2. TKRE NGET project Early Construction Funding assessment

Section summary

This chapter sets out NGET's ECF application and our minded-to position.

Questions

Q1: Do you agree with our minded-to position to provide ECF for the TKRE project?

Q2: Do you agree with our proposed modification to adjust $ASTIA_t$ in Appendix 1 of SpC 3.41?

Brief description of the project

2.1 TKRE is a project that involves constructing a new 2.2km tunnel under the Thames Estuary and two new headhouses including the installation of higher capacity High Voltage (HV) cables. Decommissioning of the existing cable tunnel is not within this project scope. It also involves uprating 27km of existing overhead line (OHL), by reconductoring the existing 4 x 400 ACSR (3326MVA) OHL sections of the Tilbury-Grain/Tilbury-Kingsnorth circuits (A784/A785) to make the entire route 3 x AAAC (3820 MVA).

2.2 This upgrade will replace the conductors in the Tilbury to Grain and Tilbury to Kingsnorth circuits with higher-rated conductors. This will enable the transmission of renewable energy to the high demand area of Greater London and facilitate power delivery to and from the interconnectors around the south-east coast when they are respectively exporting and importing power.

2.3 A map displaying the existing network and proposed new infrastructure as well as a brief description of the TKRE NGET project is shown below.

Figure 1: This is the aerial view of the intended connection from Tilbury to Grain. The coloured lines represent the circuits between each substation. Tilbury – Kingsnorth (purple) and Kingsnorth to Grain (yellow). The tunnel is represented with a thick yellow line.

2.4 The ECF has been submitted at this stage as NGET is satisfied that their plans have sufficiently progressed to make this submission.

ECF application

2.5 NGET made an application for ECF under Part C of SpC 3.41 of their licence to enable funding of early construction activities for the TKRE project. These activities align to strategic land purchases, early enabling works, and early procurement commitments.

Table 1: TKRE ECF Funding application (percentages rounded up / down to the nearest whole percent)

Project	**Percentage of total project spend**	**Remainder of cap available**
TKRE	*19.72%*	*0.28%*

Table 2: Summary of works submitted for each of the ECF categories

ECF category	**Summary of works**
Early procurement commitments	• Tunnel Boring Machine (TBM) • HV cables • Site generators • Tunnel moulds • A permanent power supply for both tunnel headhouses • Spoil slurry separation plant equipment
Early enabling works	• Detailed design work for the TBM • Site clearance and site set up for the Gravesend headhouse site • Additional site surveys at both headhouse locations • Insurance for third party liability, environmental and early construction risks for the project • Demobilisation costs in case of early termination
Strategic Land purchases	Lease of: • 1.8 acres of land from Port of Tilbury for the new tunnel headhouse • 16.5 acres of land for a temporary construction area • 1.6 acres of land from the Royal Society for the Protection of Birds (RSPB) for a temporary construction site at Gravesend

Early procurement commitments

2.6 NGET have identified a list of procurement commitments for the long lead items that are required to support a 2028 Earliest in Service Date (EISD). These are only required for the tunnelling element of the project. For the OHL parts of the project, NGET confirmed that these costs will be included in the PA, as these will be taking place much later in the program.

Tunnel Boring Machine

2.7 Firstly, the TKRE project will require a TBM to excavate the tunnel. This will be required on site in March 2026 to begin excavation. The design and build of the new TBM has a lead time of between 12 and 18 months. Therefore, NGET will need to place an order in November 2024, so that the TBM is available on site in line with the programme. They expect to make two payments in advance of the PA for the purposes of the TBM.

HV cables

2.8 In addition, HV cables will also need to be procured early, to ensure the risk from long lead items is minimised. Although the lead times for HV cables have been historically 6-12 months, in the current market conditions, this could take as long as 2 years. This is the time period that covers manufacture, testing and transport of the cable drums to site for installation.

2.9 Based on the above, NGET state that the order for the cables should be placed by November 2024, so as to allow a period of detailed design by the contractor to complete their construction design specification and determine the cable lengths. They believe that early placement of his order will mitigate risks regarding potential delays in the construction programme, in case these long lead items are not delivered on time.

Construction power - generators

2.10 The construction of the project will require around 11MVA of power. There are physical constraints in the DNO local area. Because of that, connecting the site to the DNO substation requires crossing the road and conveyor belt; a cable run is unsuitable for this. Alternatives that were considered included additional connections onto local UKPN supply in the area and potential to uprate existing

supplies. However, it was found that these options would still not be sufficient to provide the capacity required by the TBM and Separation Plant (SP).

2.11 Therefore, NGET want to procure their own generators by October 2024. The ECF submission included the costs of procuring diesel generators, and they also noted they will explore the option of using Hydrotreated Vegetable Oil (HVO) generators as well. The generators have long lead times due to the amount of MVA needed.

Tunnel segments/moulds

2.12 Tunnel moulds are essential in manufacturing tunnel segments, they are bespoke to the tunnel and created from the data provided by the contractor. These need to be ordered at least 6 months in advance of construction, to cover the design and testing period prior to the installation.

Power supply for both head houses

2.13 NGET need to uprate the power for the existing and the new headhouse in Gravesend by August 2024. This is to cover the power demand from both headhouses as well as the temporary site accommodation needed for the Gravesend site. They want to procure these works under the ECF funding.

Separation plant

2.14 Due to the complexity of the spoil slurry plant, early works to set it up will be required to accommodate this during first site access.

Strategic land purchases

2.15 NGET have requested to fund three types of strategic land purchases to meet their 2028 delivery, that are relevant to tunnel works only. NGET are looking to build two headhouses for the purposes of TKRE: one in Tilbury and one in Gravesend.

2.16 First, they want to lease 1.8 acres of land for the new headhouse in Tilbury, including a cable sealing end compound on a 150-year lease. This is currently under the Port of Tilbury's ownership.

2.17 They also want to temporarily lease 16.5 acres of land to support the construction area of the Tilbury headhouse. This area is also under the Port of Tilbury's ownership. The minimum lease term is five years, but NGET has only requested

the first year's lease in the ECF request. If NGET decides to terminate the lease agreement with the Port of Tilbury, it will seek to reduce its lease liability in case the Port of Tilbury manage to develop the land for their commercial use. NGET have stated that they will not commit to the lease until the planning permission is in place. The full lease term will be included in the PA.

2.18 In terms of the Gravesend headhouse, this will be built on land already owned by NGET.

2.19 The project will need to lease 1.6 acres of land from the RSPB for a temporary construction site that will support the construction of the new Gravesend Headhouse. This land is next to the site of the new headhouse, and it will be used for site laydown and storage, as well as site welfare with minimal parking. This lease is expected to begin in September 2024 to allow first site access for the duration of the project.

Early enabling works request

2.20 NGET listed the early enabling works required to support a 2028 EISD.

Detailed design/consents

2.21 NGET will need to award a main works contractor by October 2024, so that they progress detailed designs post Town and Country Planning approval, for the tunnel, headhouses and cables. Detailed designs will also be required for the early procurement of the TBM (see 2.7). The main contractor is also expected to progress consents and licenses in line with planning conditions and carry out additional site surveys at both headhouses.

Site clearance and site setup

2.22 NGET will commence the site set up in February 2025. The contractor will carry out clearance works for the headhouse at Gravesend, in order to commence setup of the site and any early works to construct the site compound. A temporary road will also need to be constructed at the Tilbury site to allow third party access to other lands and facilitate HGV movements.

Demobilisation

2.23 NGET asked funding to cover liabilities with the contractor for site de-mobilisation in case the contract has to be terminated (for example, if the required consents are not obtained). This funding also covers the costs for following through and closing out any secondary licences/consents.

Project risk insurance

2.24 NGET requested funding to cover early construction activities for a minimum of one year from the starts of the works (early in 2025). This will cover activities consisting of construction liability, third party liability and environmental impairment liability insurance.

Project Management and risk

2.25 Lastly, NGET requested funding for the staff cost required to support the project during the early enabling works, covering a period from October 2024 to April 2025 (estimated time for contract award). Activities involve detailed design and consents for the tunnel, headhouses and cables along with procurement of licenses with planning conditions for both headhouses.

Our Minded-to position

2.26 NGET's ECF application is within the maximum ASTI ECF allowance of 20% of the total forecast project cost as set by SpC 3.41.8.

2.27 We have engaged further with NGET to understand the reasons behind the request for demobilisation costs (see 2.23). NGET said that they would not normally expect to spend this part of the funding, unless the project is terminated, in which case they will incur extra costs that they will need to recover.

2.28 ECF seeks to enable early construction activities that are required to accelerate the project, thereby helping to safeguard the overall programme and delivery of the project. We believe that the proposed demobilisation costs are not relevant to specific activities needed to progress the project, instead they relate to project cancellation risks.

2.29 We are therefore minded-to not approve the request to fund demobilisation costs as part of the ECF.

2.30 We believe that there is another route available for TOs to recover such costs if needed. The guidance includes provision for cases where a project is cancelled at different stages of the ASTI framework.[8] In the event that TKRE gets cancelled, we expect NGET to follow the guidance and submit efficient costs that will be incurred until demobilisation.

2.31 We agree that the rest of the early enabling activities are required to ensure timely progression of the projects' main works, and thus reduce overall schedule and cost risk on the project.

2.32 We agree with NGET's proposal to proceed with strategic land purchases wherever possible as part of early construction activities. We recognise that this helps reduce uncertainty, confirms project scope, and de-risks the overall programme. In addition, undertaking strategic land purchase negotiations and agreements at this stage helps ensure that all necessary land purchases are completed ahead of the commencement of construction activities.

2.33 We also recognise that supply chain procurement of transmission infrastructure is constrained with increased procurement costs and elongated lead times for critical assets. Funding activities that ensure contractor commitment and delivery of long-lead items helps preserve the programme and de-risk the project.

2.34 We agree with NGET that there is a risk to the main works contract if ECF is not approved. The changing supply chain situation across Europe has resulted in capacity reservation agreements becoming increasingly common to secure contractor commitment and their continued engagement on projects.

2.35 Our minded-to position is to approve NGET's request for ECF to the value of 19.29% of the total forecast project cost listed in the ASTI Confidential Annex.

[8] The ASTI Guidance covers the expectation for cases where a project gets cancelled at different stages of the assessment process:
- after PCF funding, before an output is delivered: 3.40-3.41
- after ECF has been provided: 4.20-4.23
- after PA Decision: 4.98-4.101

3. Next steps

Section summary

This chapter sets out the next steps in our assessment under the ASTI framework.

3.1 Our consultation on the positions set out in this document will close on 10 September 2024.

3.2 We aim to publish our ECF decision in autumn 2024 and, subject to the outcome of the consultation, this will be alongside the decision to modify NGET's licence in accordance with section 11A of the Electricity Act 1989.

3.3 The proposed modifications to Appendix 1 of SpC 3.41 are set out in Appendix 1 of this consultation and the ASTI Confidential Annex. Please note that other proposals that are currently being consulted on are not reflected in the drafting.

Appendices

Appendix 1 – Notice of statutory consultation to modify SpC 3.41 of the Licence

To: National Grid Electricity Transmission Plc Electricity Act 1989 Section 11A(2)

Notice of statutory consultation on a proposal to modify the Special Conditions of the electricity transmission licence held by National Grid Electricity Transmission

1. The Gas and Electricity Markets Authority ('the Authority')[9] proposes to modify the Special Conditions (SpC) of the electricity transmission licence held by National Grid Electricity Transmission Plc (NGET) granted or treated as granted under 6(1)(b) of the Electricity Act 1989 by amending an allowance value ($ASTIA_t$) referenced in Appendix 1 (ASTI Price Control Deliverable) of SpC 3.41 (Accelerated strategic transmission investment Re-opener and Price Control Deliverable term ($ASTIR_t$)).

2. In line with SpC 3.41.10 and the Accelerated Strategic Investment Guidance and Submission Requirements Document, we are proposing this modification because we are satisfied that NGET's Early Construction Funding (ECF) application:

    a. has not exceeded the stated threshold of 20% of total forecasted project cost as set by SpC 3.41.8 and therefore strikes the appropriate balance between assisting acceleration and protecting consumers from potentially excessive cost exposure in the unlikely event that the projects do not progress;
    b. was pre-empted by a notice in writing of NGET's intention to make the application under section 3.41.7 at least 8 weeks before NGET made the application; and
    c. there is a clear justification for why it is in consumers' interests to provide funding for the proposed activities to take place ahead of our cost assessment as part of the PA process as the early construction activities will aid in accelerating project delivery.

3. The effect of the proposed modification is to adjust the allowances contained in the ASTI Confidential Annex as referenced in Appendix 1 ($ASTIA_t$) of Special Condition 3.41 'Accelerated strategic transmission investment Re-opener and Price Control Deliverable term ($ASTIA_t$)' in NGET's electricity transmission licence to allow NGET's ECF expenditure application. The proposed modification will be reflected in what will become the latest version, v1.1, of the ASTI Confidential Annex.

4. With the exception of the ASTI Confidential Annex, a copy of the proposed modification and other documents referred to in this Notice have been published on our website (www.ofgem.gov.uk). Alternatively, they are available from information.rights@ofgem.gov.uk

5. The full text of the proposed modification to Appendix 1 of SpC 3.41 is set out below in Appendix 2 with the new text to be inserted shown double underscored.

[9] The terms "the Authority", "we", "our" and "us" are used interchangeably in this document.

For reasons of commercial sensitivity, details of the amended allowance are confidential but will be issued to NGET in the updated ASTI Confidential Annex.

6. Any representations with respect to the proposed licence modification must be made on or before 10 September 2024 to: Lina Apostoli, Office of Gas and Electricity Markets, 32 Albion Street, Glasgow, G1 1LH or by email to RIIOElectricityTransmission@ofgem.gov.uk and marked for the attention of Lina Apostoli.

7. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.

8. If we decide to make the proposed modification, it will take effect not less than 56 days after the decision to modify the licence is published.

.....
James Dunshea
Head of Large Project Transmission Delivery
Duly authorised on behalf of the
Gas and Electricity Markets Authority **13 August 2024**

Appendix 2 – Draft of proposed modifications to Special Condition 3.41 of the electricity transmission licence held by NGET

Deletions are shown in strikethrough and new text is double underlined.

Special Condition 3.41 Accelerated strategic transmission investment Re-opener and Price Control Deliverable term ($ASTIR_t$)

Introduction

3.41.1 The purpose of this condition is to specify the value of the term $ASTIR_t$ (the accelerated strategic transmission investment Re-opener term). This contributes to the calculation of the Totex Allowance.

3.41.2 The effect of this condition is to:

(a) specify the ASTI Outputs, delivery dates and allowances for the Price Control Deliverable;

(b) establish a Re-opener for the licensee to apply for an adjustment to the ASTI Outputs, delivery dates and allowances in Appendix 1 and the Minimum circuit availability standard after delivery in Appendix 2;

(c) provide for an assessment of the Price Control Deliverable; and

(d) establish the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document.

3.41.3 This condition also sets out the process the Authority will follow when making changes to Appendix 1 as a result of the Re-opener.

Part A: Formula for calculating the accelerated strategic transmission investment Re-opener term ($ASTIR_t$)

3.41.4 The value of ASTIRt is derived in accordance with the following formula:

$$ASTIR_t = ASTIA_t - ASTIRA_t$$

where:

$ASTIA_t$ means the allowances in Appendix 1; and

$ASTIRA_t$ has the value zero unless otherwise directed by the Authority in accordance with Part G.

Part B: ASTI Outputs

3.41.5 The licensee must deliver the ASTI Outputs no later than 12 months after the delivery dates specified in Appendix 1.

3.41.6 After the ASTI Output has been delivered it must be operational and available for use by NGESO for the period specified in Appendix 2 after application of the exclusions set out in Chapter 4 of the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document.

Part C: Early Construction Funding

3.41.7 The licensee may, in respect of any ASTI Output, apply for an Early Construction Funding decision to adjust $ASTIA_t$.

3.41.8 Unless the Authority directs otherwise, the aggregate allowances provided under paragraph 3.41.7 for any ASTI Output may not exceed 20% of the total forecast project cost listed in the ASTI Confidential Annex.

3.41.9 The licensee must notify the Authority in writing of its intention to make an application under 3.41.7 at least 8 weeks before making an application, unless the Authority directs otherwise.

3.41.10 A modification under this Part will be made under section 11A of the Act.

Part D: ASTI Project Assessment Decision

3.41.11 The licensee may, in respect of any ASTI, apply for an ASTI Project Assessment Decision and an associated modification of Appendices 1 and 2 to:

(a) specify or amend an ASTI Output, a delivery date and associated allowances; and
(b) specify the minimum circuit availability standard after delivery for the relevant ASTI Output.

3.41.12 Unless the Authority otherwise directs, the licensee may only apply for an ASTI Project Assessment Decision after submission of all material planning consent applications.

3.41.13 A modification under this Part will be made under section 11A of the Act.

Part E: ASTI Cost and Output Adjusting Event

3.41.14 The licensee may apply for a modification to the ASTI Outputs and allowances in Appendix 1 where it considers that there has been one or more ASTI Cost and Output Adjusting Event.

3.41.15 The licensee may only apply under this Part to modify allowances in Appendix 1 where:

(a) expenditure has been caused to increase or decrease by at least the percentage specified in, or in accordance with, paragraph 3.41.17, calculated before the application of the Totex Incentive Strength, relative to

the relevant allowance in Appendix 1 by the event or if there has been more than one event:

i. by each event;

ii. if the Authority has directed that the events in relation to the relevant ASTI Output should count cumulatively towards the percentage threshold and

(b) the increase or decrease in expenditure is expected to be efficiently incurred or saved.

3.41.16 The licensee may apply under this Part to modify the ASTI Outputs in Appendix 1 only where there is a material change to the scope of the relevant ASTI project.

3.41.17 The percentage referred to in paragraph 3.41.15(a) is:

(a) 5%; or

(b) such other percentage as the Authority may specify by direction.

3.41.18 An application under this Part must be made in writing and must:

(a) include detailed supporting evidence that an ASTI Cost and Output Adjusting Event meeting the requirements set out in paragraphs 3.41.15, or where applicable 3.41.16, has occurred;

(b) set out the modifications requested to the ASTI Outputs or associated allowances in Appendix 1;

(c) explain the basis of the calculation for any proposed modification to the allowances in Appendix 1, which must be designed to keep, so far as is reasonably practicable, the financial position and performance of the licensee the same as if the ASTI Cost and Output Adjusting Event had not occurred; and

(d) include a statement from a technical adviser, who is external to and independent from the licensee, whether, considered in the context of the value of the ASTI Output, the proposed modification to the ASTI Output or associated allowances fairly reflects the effects of the ASTI Cost and Output Adjusting Event.

3.41.19 The Authority may make a modification under this Part where:

(a) there has been an application under this Part;

(b) there has been an ASTI Cost and Output Adjusting Event in relation to the relevant ASTI;

(c) the requirements of paragraphs 3.41.14 to 3.41.18, where applicable, have been met; and

(d) the proposed modifications to Appendix 1 have the effect so far as is reasonably practicable of keeping the financial position and performance of the licensee the same as if the ASTI Cost and Output Adjusting Event had not occurred.

3.41.20 A modification under this Part will be made under section 11A of the Act.

Part F: Modification of delivery date in Appendix 1 further to an ASTI ODI Penalty Exemption Period decision or ASTI ODI Target Date decision under Part B of Special Condition 4.9 (Accelerated strategic transmission investment output delivery incentive)

3.41.21 The Authority will modify the delivery dates in Appendix 1 where it decides under Part B of Special Condition 4.9 (Accelerated strategic transmission investment output delivery incentive) to make a modification to the ASTI ODI Penalty Exemption Period or ASTI ODI Target Date in Appendix 1 of Special Condition 4.9.

3.41.22 A modification under this Part will be made under section 11A of the Act.

Part G: Assessment of the Price Control Deliverable ($ASTIRA_t$)

3.41.23 The Authority will, in accordance with the assessment principles set out in Part A of Special Condition 9.3 (Price Control Deliverable assessment principles and reporting requirements), consider directing a value for $ASTIRA_t$ where the licensee has not Fully Delivered an output in Appendix 1.

Part H: What process will the Authority follow in making a direction?

3.41.24 Before making a direction under Part G the Authority will publish on the Authority's Website:

(a) the text of the proposed direction;

(b) the reasons for the proposed direction; and

(c) a period during which representations may be made on the proposed direction, which will not be less than 28 days.

3.41.25 A direction in respect of Part G will set out:

(a) the delivery status of the ASTI Output that has not been Fully Delivered;

(b) the value of the $ASTIR_t$ term and the Regulatory Years to which that adjustment relates; and

(c) the methodology and data that has been used to decide the delivery status and value of any adjustments to the $ASTIR_t$ term.

Part I: Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document

3.41.26 The licensee must comply with the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document.

3.41.27 The Authority will issue and amend the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document by direction.

3.41.28 The Authority will publish the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document on the Authority's Website.

3.41.29 The Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document will make provision about the detailed requirements for Parts C, D, E and F.

3.41.30 The Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document will also make provision about the detailed requirements under Special Condition 3.40 (ASTI Pre-Construction Funding Re-opener, Price Control Deliverable and Use It Or Lose It Adjustment) and Special Condition 4.9 (ASTI output delivery incentive).

3.41.31 Before directing that the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document comes into effect, the Authority will publish on the Authority's Website:

(a) the text of the proposed Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document;

(b) the date on which the Authority intends the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document to come into effect; and

(c) a period during which representations may be made on the text of the proposed Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document, which will not be less than 28 days.

3.41.32 Before directing an amendment to the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document, the Authority will publish on the Authority's Website:

(a) the text of the amended Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document;

(b) the date on which the Authority intends the amended Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document to come into effect;

(c) the reasons for the amendments to the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document; and

(d) a period during which representations may be made on the amendments to the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document, which will not be less than 28 days

Appendix 1

ASTI Price Control Deliverable

ASTI Output	Delivery Date	Allowance ($ASTIA_t$, £m)	ECF/PA
New 400 kV double circuit in north East Anglia (NOA Code: AENC)	31 December 2031	Have the values given in the ASTI Confidential Annex.	
New 400 kV double circuit in south East Anglia (NOA Code: ATNC)	31 December 2031	Have the values given in the ASTI Confidential Annex.	

New 400 kV double circuit between Bramford and Twinstead (NOA Code: BTNO)	31 December 2029	Have the values given in the ASTI Confidential Annex.	
New 400 kV double circuit between Creyke Beck and the south Humber (NOA Code: CGNC)	31 December 2031	Have the values given in the ASTI Confidential Annex.	
Eastern subsea HVDC link from Torness to Hawthorn Pit (NOA Code: E2DC)	31 December 2028	Have the values given in the ASTI Confidential Annex.	
Eastern Scotland to England link: Peterhead to Drax offshore HVDC (NOA Code: E4D3)	31 December 2030	Have the values given in the ASTI Confidential Annex.	
Eastern Scotland to England 3rd link: Peterhead to the south Humber offshore HVDC (NOA Code: E4L5)	31 December 2031	Have the values given in the ASTI Confidential Annex.	
400 kV upgrade of Brinsworth to Chesterfield double circuit and Chesterfield to High Marnham double circuit. New High Marnham and Chesterfield 400 kV substations (NOA Code: EDEU)	31 December 2029	Have the values given in the ASTI Confidential Annex.	
New Chesterfield to Ratcliffe-on-Soar 400 kV double circuit (NOA Code: EDN2)	31 December 2031	Have the values given in the ASTI Confidential Annex.	
New 400 kV double circuit between the south Humber and south Lincolnshire (NOA Code: GWNC)	31 December 2031	Have the values given in the ASTI Confidential Annex.	
Uprate Hackney, Tottenham and Waltham Cross 275 kV to 400 kV (NOA Code: HWUP)	31 December 2028	Have the values given in the ASTI Confidential Annex.	
New 400 kV double circuit between the existing Norton to Osbaldwick circuit and Poppleton and relevant 275 kV upgrades (NOA Code: OPN2)	31 December 2028	Have the values given in the ASTI Confidential Annex.	ECF
Pentir to Trawsfynydd cable replacement (NOA Code: PTC1)	31 December 2029	Have the values given in the ASTI Confidential Annex.	
North Wales reinforcement (NOA Code: PTNO)	31 December 2030	Have the values given in the ASTI Confidential Annex.	
New Offshore HVDC link between Suffolk and Kent option 1 (NOA Code: SCD1)	31 December 2031	Have the values given in the ASTI Confidential Annex.	
Eastern subsea HVDC Link from east Scotland to south Humber area (NOA Code: TGDC)	31 December 2031	Have the values given in the ASTI Confidential Annex.	
Tilbury to Grain and Tilbury to Kingsnorth upgrade (NOA Code: TKRE)	31 December 2029	Have the values given in the ASTI Confidential Annex.	ECF

Appendix 2

ASTI Output availability standard

ASTI Output	Minimum circuit availability standard after delivery (%)		
	0-6 months	6-12 months	12-24 months
New 400 kV double circuit in north East Anglia (NOA Code: AENC)			
New 400 kV double circuit in south East Anglia (NOA Code: ATNC)			
New 400 kV double circuit between Bramford and Twinstead (NOA Code: BTNO)			
New 400 kV double circuit between Creyke Beck and the south Humber (NOA Code: CGNC)			
Eastern subsea HVDC link from Torness to Hawthorn Pit (NOA Code: E2DC)			
Eastern Scotland to England link: Peterhead to Drax offshore HVDC (NOA Code: E4D3)			
Eastern Scotland to England 3rd link: Peterhead to the south Humber offshore HVDC (NOA Code: E4L5)			
400 kV upgrade of Brinsworth to Chesterfield double circuit and Chesterfield to High Marnham double circuit. New High Marnham and Chesterfield 400 kV substations (NOA Code: EDEU)			
New Chesterfield to Ratcliffe-on-Soar 400 kV double circuit (NOA Code: EDN2)			
New 400 kV double circuit between the south Humber and south Lincolnshire (NOA Code: GWNC)			
Uprate Hackney, Tottenham and Waltham Cross 275 kV to 400 kV (NOA Code: HWUP)			
New 400 kV double circuit between the existing Norton to Osbaldwick circuit and Poppleton and relevant 275 kV upgrades (NOA Code: OPN2)			
Pentir to Trawsfynydd cable replacement (NOA Code: PTC1)			
North Wales reinforcement (NOA Code: PTNO)			
New Offshore HVDC link between Suffolk and Kent option 1 (NOA Code: SCD1)			
Eastern subsea HVDC Link from east Scotland to south Humber area (NOA Code: TGDC)			
Tilbury to Grain and Tilbury to Kingsnorth upgrade (NOA Code: TKRE)			

Appendix 3– Privacy notice on consultations

Personal data

The Gas and Electricity Markets Authority is the controller ("Ofgem" for ease of reference). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally). It does not refer to the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller ("Ofgem" for ease of reference). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest, i.e. a consultation.

4. With whom we will be sharing your personal data.

N/A.

5. For how long we will keep your personal data or the criteria used to determine the retention period

Your personal data will be held for six months after the project is closed.

6. Your rights

The data we are collecting is your personal data and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data,
- access your personal data,
- have your personal data corrected if it is inaccurate or incomplete,
- ask us to delete your personal data when we no longer need it,
- ask us to restrict how we process your personal data,
- get your personal data from us and re-use it across other services,
- object to certain ways we use your personal data,
- be safeguarded against risks where decisions based on your personal data are taken entirely automatically,
- tell us if we can share your personal information with 3rd parties,
- tell us your preferred frequency, content and format of our communications with you,
- lodge a complaint with the independent Information Commissioner's Office (ICO) if you think we are not handling your personal data fairly or in accordance with the law. You can contact the ICO at https://ico.org.uk/ or telephone 0303 123 1113.

7. Your personal data will not be sent overseas.

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system.

10. More information

For more information on how Ofgem processes your data, click on "Ofgem privacy promise"

Decision on accelerating onshore electricity transmission investment

Publication date:	15 December 2022
Contact:	RIIO team
Team:	Networks
Telephone:	020 7901 7000
Email:	RIIOElectricityTransmission@ofgem.gov.uk

This document sets out our decision on accelerating onshore electricity transmission investment. It includes our decisions to streamline the regulatory approval and funding process, to exempt certain large, strategic onshore transmission projects from competition, and to introduce a new output delivery incentive.

In particular, it sets out our decisions on the specific points we sought views from respondents in our August 2022 consultation.

Contents

Executive Summary

The Government's Energy Security Strategy (ESS) set out a series of steps to accelerate our transition away from reliance on expensive and environmentally harmful fossil fuels. The invasion of Ukraine highlights that this transition is now not just a matter of meeting Great Britain's Net Zero (NZ) targets, but also highlights the need to reduce our reliance on gas from a security of supply perspective. The ESS set out ambitious targets to promote energy security, including connection of up to 50GW of offshore wind capacity by 2030, however the existing onshore transmission network cannot currently support this substantial growth in renewable electricity generation.

Our existing Large Onshore Transmission Investment (LOTI) framework[1] continues to play an important role in facilitating critical investment in the onshore transmission network, whilst ensuring only the efficient costs of this investment are passed on to consumers. However, given the scale and pace of the required investment, we have looked at how our regulatory framework can be adjusted to support strategic onshore electricity transmission (ET) projects being expedited to deliver the Government's 2030 ambitions.

In August 2022 we proposed a package of measures aiming to facilitate accelerated delivery by the Transmission Owners (TOs).[2] We have taken stakeholder feedback into consideration and have decided to implement a new Accelerated Strategic Transmission Investment (ASTI) regulatory framework to fund the large strategic onshore transmission projects required to deliver the Government's 2030 ambitions.

This document details our decision to streamline the regulatory approval and funding process by reducing the number of regulatory assessment stages and allowing the TOs earlier access to project funding in order to accelerate the delivery of ASTI projects. We have also decided to exempt from competition the projects that the TOs' delivery plans consider are deliverable by 2030, with the incumbent TOs responsible for the delivery of all projects currently included in the list of ASTI projects.[3] Our decision on competition exemptions allows for a programmatic delivery of the projects required to deliver the Government's 2030 ambitions. However, we also need to ensure that consumers benefit from this approach and as consumers will not enjoy the benefits of competition, we have introduced a strong incentive that rewards/penalises the TOs for early/late delivery

[1] As set out in special condition 13.3 of the Electricity Transmission Licences
[2] Consultation on accelerating onshore electricity transmission investment | Ofgem
[3] When we refer to "the list of ASTI projects" this refers to the current list of projects in scope for the ASTI framework. These projects are listed in Appendix 1 as "in scope" for ASTI.

respectively. Our updated analysis suggests that, if all ASTI projects are delivered by their optimal delivery dates, we expect consumers will see a net benefit of up to £2.1bn[4] in terms of reduced constraint costs and carbon savings. However, this consumer benefit is contingent upon timely project delivery.

We consider that the new ASTI framework strikes the appropriate balance between accelerating delivery of strategic onshore transmission projects and protecting consumers. The framework will allow the TOs to implement their delivery plans without delay, is flexible and capable of managing future uncertainty, and provides a regulatory platform that we believe can best facilitate the delivery of the Government's 2030 NZ ambitions.

Delivering the Government's ambitions will require a step-change in the way large onshore transmission projects are delivered with an unprecedented level of network infrastructure required up to 2030. The ASTI framework will initially apply to around £20bn of onshore transmission network investment with potential for further investment in the future as we seek to decarbonise the energy sector and pivot away from reliance on fossil fuels. The ASTI framework represents a significant shift in the way large projects are identified, assessed, and funded. Alongside the Offshore Transmission Network Review[5] (OTNR) publication, and the ESO's Holistic Network Design (HND)[6], ASTI should be seen as part of a departure from traditional incremental network build towards a more co-ordinated, top-down network planning approach. We consider that this new approach can better deliver the required network upgrades on a more programmatic basis.

We are under no illusions about the scale of the challenge ahead in terms of delivering the required investment by 2030. The changes to the regulatory framework detailed in this decision document alone will not be sufficient to ensure the connection of the offshore generation to the electricity network by 2030 without adjustments to both the current planning regime and the TOs delivery models. A multi-party approach between Governments, the TOs and Ofgem is required, and we are confident that we can work together to deliver a greener and more energy-secure future at the lowest possible cost for Great Britain's energy consumers.

[4] This figure is our estimated net "central" outcome. Appendix 2 provides detail on how this figure was calculated.
[5] Offshore transmission network review - GOV.UK (www.gov.uk)
[6] A Holistic Network Design for Offshore Wind | National Grid ESO

1. Introduction

Context and related publications

1.1. This document sets out our decision to implement a framework to accelerate strategic onshore transmission investment. We sought stakeholder's views through a consultation document we published in August 2022. Stakeholders' responses and further stakeholder engagement have informed our final decision.

1.2. The main documents relating to this area of work are:

- Consultation on accelerating onshore electricity transmission investment[7]: our August 2022 consultation that precedes this Decision.

- Government's Energy Security Strategy (ESS)[8]: this document set out ambitious targets for low carbon generation to accelerate the shift away from fossil fuels to promote energy security, while meeting NZ targets.

- Electricity networks strategic framework (ENSF)[9]: joint Department for Business, Energy and Industrial Strategy (BEIS) and Ofgem publication setting out the actions government and Ofgem are taking to ensure the electricity network can act as an enabler of a secure, resilient and NZ energy system.

- Holistic Network Design[10] (HND) and Network Options Assessment Refresh[11] (NOA Refresh): National Grid Electricity System Operator's (ESO) findings on network upgrades needed to meet Government's ambition to connect up to 50GW of offshore wind generation by 2030.

- Offshore Transmission Network Review: Decision on asset classification[12]: Decision on the classification[13] of the assets included in the HND.

[7] Consultation on accelerating onshore electricity transmission investment | Ofgem
[8] British energy security strategy - GOV.UK (www.gov.uk)
[9] https://www.gov.uk/government/publications/electricity-networks-strategic-framework
[10] Holistic Network Design
[11] Network Options Assessment Refresh
[12] Offshore Transmission Network Review: Decision on asset classification | Ofgem
[13] The process distinguished between 'onshore' to be delivered by Transmission Owners, and 'offshore' projects to be delivered through the Offshore Electricity Transmission (OFTO) regime

Our decision-making process

1.3. In August 2022 we published a consultation document detailing our proposals on how we could accelerate strategic onshore transmission investment. We received 36 responses from a range of stakeholders and have engaged with stakeholders since then to get a better understanding of their views.

1.4. We have published the non-confidential responses we received on our website, alongside this document.

Your feedback

1.1. We are happy to receive any feedback about this document, and would welcome your answers to these questions:

1. Do you have any comments about the overall quality of this document?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Are its conclusions balanced?
5. Did it make reasoned recommendations?
6. Any further comments?

Please send any general feedback comments to stakeholders@ofgem.gov.uk

2. Why are we changing the regulatory framework?

Section summary

We set out the background for why we are making changes to support the accelerated delivery of onshore electricity network infrastructure and the challenges in delivering an accelerated programme of work. We also summarise our decision regarding the new ASTI framework.

Background

2.1. In April 2022, the Government published its ESS[14] which set out the ambition to connect up to 50GW of offshore wind generation to the electricity network by 2030.

2.2. The ESO was tasked with identifying the network upgrades that would be needed to meet the Government's 2030 ambitions. This request resulted in the ESO publishing the HND[15] and NOA Refresh[16] in July 2022, which set out the required offshore and onshore network reinforcements to allow for the compliant connection, under Security and Quality of Supply Standard (SQSS),[17] of the offshore generation. Successful delivery of these projects will allow the bulk transfer of energy from sources of renewable generation off the British coast to the locations of energy demand, typically in southern England.

2.3. Delivering the Government's ambitions will bring significant benefits to the British energy system in terms of its overall resilience, security of supply and decarbonisation of the sector. However, there are also significant potential consequences if the required onshore transmission upgrades are not delivered by 2030, including capacity not being able to be connected in a full and safe manner, increased constraints, and constraint costs that are ultimately passed on to consumers' energy bills.

The challenge – connecting up to 50GW of offshore wind generation by 2030

[14] British energy security strategy - GOV.UK (www.gov.uk)
[15] The Pathway to 2030 Holistic Network Design | National Grid ESO
[16] https://www.nationalgrideso.com/document/262981/download
[17] https://www.nationalgrideso.com/industry-information/codes/security-and-quality-supply-standards

2.4. Delivering the required levels of investment by 2030 represents a significant and unprecedented challenge for Great Britain and meeting the Government's ambitions will require the collective efforts of the TOs and their supply chains, Ofgem and the Westminster and Scottish Governments, with all parties having a critical role to play.

2.5. Currently, large onshore transmission projects typically take around 11-13 years from identification of project need to project completion under the Large Onshore Transmission Investment (LOTI)[18] regulatory framework. Whilst it may offer heightened regulatory scrutiny and consequential consumer protection on a project-by-project basis, assessing large transmission projects under this framework is unlikely to afford the necessary pace to deliver the Government's 2030 ambitions, and limits the scope for the required investment to be considered and delivered in a programmatic fashion. Accordingly, a new regulatory framework is required that can accelerate the regulatory process and provide the platform from which the TOs can implement their project delivery plans.

2.6. The TOs have highlighted that one of the barriers to expediting delivery of large infrastructure projects is the current planning and consenting regimes in each of England, Wales and Scotland. Reforms to these regimes are likely to be essential to the delivery of the full range of onshore transmission network upgrades required by 2030. In the ENSF, the Government set out a series of actions to support this in England and Wales, including the review of the energy National Policy Statement[19] to support rapid infrastructure delivery, as well as the review of the planning consent process through the Government's National Infrastructure Planning Reform Programme. The latter is proposed to include a fast-track process for those projects which meet eligibility criteria.

Our consultation

2.7. In August 2022 we consulted on how Ofgem can support the accelerated delivery of the strategic electricity transmission network upgrades needed to meet the Government's 2030 offshore wind generation ambitions. Our initial analysis suggested that the quantifiable consumer benefit of accelerating delivery of onshore transmission infrastructure and delivering the Government's ambitions was between £1.7bn - £3.1bn[20], with additional unquantified benefits in terms of the contribution towards NZ, enhanced security of supply and improved system resilience.

[18] Large Onshore Transmission Investments (LOTI) Re-opener Guidance | Ofgem
[19] National Policy Statements for energy infrastructure - GOV.UK (www.gov.uk)
[20] Against a counterfactual of delivering projects by their current Earliest-In-Service Dates (EISDs) without acceleration

2.8. The consultation included our proposals to streamline the current regulatory approval and funding process for large electricity transmission projects and exempt certain strategic projects from competition, as well as measures to protect consumers against additional risks that changing the process brings.

2.9. Consultation respondents were overall supportive of the intention of the proposed changes. The key point raised in response was that timely delivery of the required investment should be the key priority for the regulatory arrangements. To this end, respondents were supportive of exempting projects from competition and streamlining the regulatory approval process where this facilitates timely delivery.

Our Decision

2.10. We have decided to introduce a new regulatory approval and funding framework for onshore transmission projects required to deliver the Government's 2030 NZ ambitions, which will be known as ASTI projects, and will apply to an initial 26 projects. We have also decided that we will provide pre-construction funding (PCF) to develop eight additional HND-facilitating projects ahead of deciding whether to include them within the ASTI regime when the projects are further developed (see chapter 3 for details).

2.11. We confirm that each of the 26 projects included in the ASTI framework will be exempt from consideration for delivery via a competition model. With regards to the 8 projects where we have decided to initially only provide PCF, we have not exempted these projects presently from competition. When the TOs are able to provide an estimated delivery date we will consider whether it is in the interest of consumers to do so (see chapter 4 for details).

2.12. In chapter 5 we set out the funding arrangements and process that will be followed to set the PCF and early construction funding arrangements for ASTI projects. We also set out how the assessment process will work.

2.13. We have decided to introduce a new Output Delivery Incentive (ODI) that rewards/penalises the TOs for delivery against target delivery dates, and will also make use of Price Control Deliverables (PCD) and Licence Obligations (LO) to ensure consumers are adequately protected. As explained in chapter 7, following consideration of consultation responses we have made a number of adjustments to the ODI proposed in August.

Table 1: ASTI Decision Summary

	Decision	**Ref**

Scope	• ASTI framework will apply to an initial 26 projects • We will provide pre-construction funding for an additional 8 projects and make decision on inclusion within ASTI once projects further developed	Ch 3
Competition exemptions	• We are exempting all 26 projects within the ASTI framework from competition and confirming incumbent TOs as delivery bodies • We will make a decision on exempting additional 8 projects once they have been sufficiently developed	Ch 4
Assessment and funding process	• We are streamlining the regulatory process and reducing the number of regulatory assessment stage gates • We are providing pre-construction and early-construction funding ahead of planning application submission • We will undertake a full project assessment after submission of a planning application	Ch 5
Cost Benefit Analysis (CBA)	• Our updated CBA suggests that, if all projects are delivered by their optimal delivery dates, there is a net consumer benefit of up to £2.1bn. We consider that this is a conservative estimate of the benefits given the wider strategic benefits that accelerated decarbonisation unlocks.	Ch 6
Consumer protection measures	• We are introducing a timely delivery incentive with rewards/penalties for early/late delivery against a target date, with rewards/penalties based on forecast constraint costs • We are applying a Price Control Deliverable and licence obligation to deliver all ASTI outputs	Ch 7
Financeability	• We confirm our view that ASTI investments during the RIIO-2 period are financeable. We will keep financeability under review and undertake an 'in the round' assessment of financeability as part of the next price control review.	Ch 8

3. Scope of the accelerated delivery framework

Section summary

We set out the strategic onshore transmission projects that will be in scope of the accelerated delivery framework in order to support the Government's 2030 ambitions.

Background

3.1. In our consultation we defined 'strategic onshore ET projects' as 'projects that are identified by the ESO in its NOA Refresh as being needed by 2030 to connect the 50GW of offshore wind generation that are required to meet the Government's 2030 NZ ambitions (and is modelled in the HND)'.

Consultation position

3.2. In our consultation we proposed that the accelerated delivery framework will apply to strategic onshore transmission projects that:

- Meet the definition of a LOTI as set out in Special Licence Condition 1.1 (Interpretations and definitions), Part B of the TOs' electricity transmission licence: "*LOTI means the assets constituting an investment in the Transmission System, which investment:*
  (a) is expected to cost £100m or more of capital expenditure; and
  (b) is, in whole or in part, load-related."[21]

- Needs to be operational by 2030 to meet the Government's ambition to connect 50GW offshore wind generation; and

- There is clear evidence that the expected consumer benefits of applying the accelerated delivery framework to the project exceeds the expected consumer detriment.

3.3. We refer to these requirements as the "ASTI criteria" throughout this decision document.

[21] Transmission System has the meaning given to that term by section 4(4) of the Electricity Act 1989.

3.4. Our assessment of the NOA Refresh using these criteria provisionally identified 26 strategic ET projects that we included on our initially proposed list of ASTI projects[22], with estimated costs of £19.8bn.

3.5. We proposed that any additional projects that are identified in the future that meet the above criteria would also be considered for inclusion within the scope of the accelerated delivery framework.

3.6. For projects that are expected to cost under £100m we proposed that these would continue to be assessed and funded under the Medium Sized Investment Project (MSIP) mechanism and would not be considered within scope of the ASTI framework. We also proposed that projects that are not required to deliver the Government's 2030 ambitions would be out of scope.

Summary of consultation responses

3.7. Seven stakeholders agreed with the proposed criteria to identify ASTI projects and a further eight were generally supportive, while five respondents disagreed with the proposed approach.

3.8. Respondents encouraged Ofgem to ensure the new framework does not disadvantage projects that are not required to deliver the Government's 2030 ambitions, while some respondents, including a TO, stated that the third criterion (see paragraph 3.2 above) was too onerous and should be refined.

3.9. A number of stakeholders, particularly generators, suggested that the £100m threshold was arbitrary and too high, and further challenged the identification of projects through the HND and NOA Refresh, proposing that all infrastructure projects should be accelerated through the ASTI framework.

3.10. Two TOs agreed with the initially proposed list of ASTI projects, while one TO proposed that an additional three projects should be included. A significant number of local stakeholders stated that the Western Isles (Arnish-Beauly) High Voltage Direct Current (HVDC) link (included in the HND but not in the NOA Refresh) should be within scope of the ASTI framework.

[22] The initially proposed list of ASTI projects refers to the 26 projects we set out in our consultation as being in scope for the ASTI framework.

3.11. The ESO responded that the accelerated framework should apply to some offshore-located assets within the HND if they are classified as onshore in the future. It also noted that without acceleration of 10 projects with a current Earliest-in-Service Date (EISD) of post-2030 the network may not be SQSS compliant.[23]

Decision

3.12. We have decided to apply the ASTI framework to an initial 26 projects (worth £19.8bn) that we are satisfied meet the criteria set out in paragraph 3.2 above. To note, this is a different list of projects than the 26 we originally consulted on, as explained below – see Appendix 1 for the list of ASTI projects.

3.13. As per our consultation position, we will keep the list of ASTI projects under review and are open to including additional projects within the ASTI scope providing they meet the ASTI Criteria set out in paragraph 3.2 above.

3.14. By including projects within the list of ASTI projects, we are accepting the needs case for these projects in terms of the technical capabilities reflected in the HND/NOA Refresh. This does not mean that the projects within ASTI may not evolve and change as they progress through the planning process and more detailed design. We will assess the detailed project design choices when the projects have been further developed and we will undertake a full Project Assessment (PA) following TOs' request for full project costs (see Chapter 5 for details of the new assessment process). Where the further development of the project, for example, as a result of changes through the planning process, has a significant impact on the design of a project and therefore means that the delivery dates are no longer achievable, we will consider whether to update delivery dates for the purposes of the ASTI ODI for these projects.

Table 2: List of ASTI projects

Project	Description	TO	Optimal Date
AENC	New 400kv double circuit north E.Anglia	NGET	2030
ATNC	New 400kv double circuit south E.Anglia	NGET	2030
OPN2	New 400kv double circuit Norton-Osbaldwick	NGET	2027
GWNC	New 400kv double circuit Humber-Lincolnshire	NGET	2030
CGNC	New 400kv double circuit Creyke Beck-Humber	NGET	2030
EDEU	400kv upgrade Brinsworth-Chesterfiled-High Marnam	NGET	2028

[23] These are the ten projects included in Table 5 of the consultation document.

EDN2	New 400kv double circuit Chesterfield-Ratcliffe-on-Saur	NGET	2030
BTNO	New 400kv double circuit Bramford-Twinstead	NGET	2028
PTC1	Cable replacement Pentir-Trawsfynydd	NGET	2028
PTNO	North Wales reinforcement	NGET	2029
TKRE	Grain-Tilbury-Kingsnorth upgrade	NGET	2028
HWUP	Uprate Hackney, Tottenham & Waltham Cross	NGET	2027
SCD1	Suffolk-Kent offshore HVDC link	NGET	2030
BLN4	Beauly-Loch Buidhe 400kv reinforcement	SSE	2030
SLU4	Loch Buidhe-Spittal 400kv reinforcement	SSE	2030
BBNC	New 400kv double circuit Bealy-Blackhillock	SSE	2030
BPNC	New 400kv double circuit Blackhillock-Peterhead	SSE	2030
BDUP	Beauly-Denny 400kv uprating	SSE	2030
TKUP	East Coast onshore 400kv Phase 2 reinforcement	SSE/SPT	2030
PSDC	Spittal-Peterhead HVDC reinforcement	SSE	2030
E4D3	Peterhead-Drax HVDC	SSE/NGET	2029
E4L5	Peterhead-south Humber HVDC	SSE/NGET	2030
W.Isles	Arnish-Beauly HVDC	SSE	2030
DWNO	Denny-Wishaw 400kv reinforcement	SPT	2028
E2DC	Torness-Hawthorn Pit HVDC	SPT/NGET	2027
TGDC	East Scotland-south Humber HVDC	SPT/NGET	2030

Rationale for our decision

Additional projects

3.15. There were two onshore projects (Western Isles 1.8GW transmission link (Arnish-Beauly) & the Beauly-Denny Upgrade project (BDUP)) included in the HND that we did not feature in the analysis used in our consultation. The Western Isles link was not included as it was not included in the NOA Refresh, which meant that we had insufficient information regarding optionality, delivery dates, project deliverability, constraint cost, impact of delay or suitability for competitive tendering. BDUP was not included because it received a "Hold" signal in the NOA refresh, suggesting that its delivery did not need to be accelerated. Since the consultation we have engaged extensively with Scottish Hydro Electric Transmission Plc (SHET), the ESO and wider stakeholders to better understand these projects. We are now satisfied that they meet the ASTI criteria and we have decided to include them within the list of ASTI projects.

Projects excluded from the initially proposed list of ASTI projects

3.16. Following assessment of the consultation responses and the project delivery plans the TOs' submitted to us in September, there are two HND projects (LRN4 and PSNC, see Appendix 1) we consulted on including within the initially proposed list of ASTI projects that, even if applying an accelerated delivery framework, NGET does not consider it

possible to deliver by 2030. The purpose of introducing the ASTI framework is to facilitate project delivery by 2030 and our CBA (see chapter 6) is predicated upon projects being delivered by then. Without NGET being able to commit to delivering these two projects by 2030 and not knowing when they could potentially be delivered, we cannot satisfy the final ASTI criterion that *'clear evidence that the expected consumer benefits of applying the accelerated delivery framework to the project exceeds the expected consumer detriment'.* As such, we are not including these projects within the list of ASTI projects. In addition, without a well-considered delivery plan from the TOs, it is not possible to include these projects within the ODI, which is an integral part of the overall ASTI framework.

3.17. It is important to note that this decision does not reflect that these projects are not of critical importance. We will allow PCF for National Grid Electricity Transmission Plc (NGET) to further develop these projects and avoid delays. Once NGET has been able to sufficiently develop these projects, or alternatives that deliver an equivalent system benefit, and submitted a detailed delivery plan, we will consider whether to include them within the list of ASTI projects following assessment of NGET's proposals.

Asset classification

3.18. In October, as part of the OTNR workstream we published our decision on HND asset classification.[24] This process identified six projects that are included in the HND but were not included in the NOA refresh as TO-delivered projects. The ESO developed these options as part of the offshore design for the HND and they were subsequently classified as onshore transmission due to their function in providing boundary reinforcement. At the time of our consultation, it was uncertain which of these projects would be determined to be onshore transmission rather than offshore transmission. For this reason, these six projects did not feature in our consultation CBA and so we did not consult on including within the ASTI framework.

3.19. The asset classification process concluded that projects that do not meet the legal definition of 'offshore' as set out in sections 6C and 64 of the Electricity Act 1989 are considered 'onshore' and it is therefore the responsibility of the TOs to deliver these projects. These projects are still at a very early stage of the development and the TOs are not yet able to commit to delivering them by 2030.

[24] Offshore Transmission Network Review: Decision on asset classification | Ofgem

Table 3: Asset classification projects

Project	Description	TO	Optimal Date
AC1	R4_2 to Lincolnshire	NGET	2030
AC2	R4_1 to R4_2	NGET	2030
AC3	Fetteresso to SW_E1a	SHET	2030
AC4	SW_E1a to R4_1	SHET & NGET	2030
AC5	Hunterston to T-point	SPT	2030
AC6	Pentir to T-point	SPT & NGET	2030

3.20. As per the two NGET projects in paragraph 3.16 above, we cannot yet satisfy the final ASTI criteria that there is clear consumer benefit by applying the ASTI framework as, until we know whether and when these projects can be delivered, we cannot rule out consumer benefit from competitive tendering. Therefore, we are not including these projects within the initial list of ASTI projects. We will allow PCF for the TOs to further develop these projects and will consider whether to include in the list of ASTI projects later following assessment of updated delivery plans. By providing PCF to allow the projects to progress, we can ensure that the delivery of these projects is not delayed by pre-construction works being unable to commence.

Project Aquila

3.21. SHET's delivery plan and consultation response included a proposal to fund Project Aquila – a direct current switching station allowing for multi-vendor HVDC interoperability at Peterhead and approved by BEIS as part of its Pathfinder[25] work – through the ASTI framework. We have assessed SHET's initial proposal and support development of the project. While we consider that Project Aquila could result in considerable consumer benefit if successfully delivered, it does not meet the first or second ASTI criteria, which include being load-related and required by 2030 to deliver the HND, and therefore we are not including it within the initial ASTI scope.

3.22. We will continue to engage with SHET regarding Project Aquila and are open to receiving a funding request for this project through the RIIO-2 Net Zero re-opener mechanism.[26] The Net Zero re-opener is Ofgem-triggered only and we will consider

[25] Ministerial letter regarding SSEN / HVDC Centre's proposal for Project Aquila (publishing.service.gov.uk)
[26] Net Zero Re-opener, Special Condition 3.6 in Electricity Transmission licence

triggering it following assessment of SHET's updated delivery plan, which we expect to receive in late December 2022.

Consideration of stakeholder responses

3.23. We disagree with the view that the £100m threshold for ASTI projects is either too high or arbitrary and are maintaining our consultation position. This is the materiality threshold decided for RIIO-ET2 for LOTI to distinguish between large and smaller onshore projects with separate funding mechanisms, specifically the MSIP re-opener. The introduction of the ASTI framework intends to accelerate delivery of large onshore transmission projects that would otherwise take longer to deliver under the LOTI regime; we see no compelling reason though to depart from our general assumptions under LOTI around what constitutes a 'large' project and have had no indication that smaller projects cannot be delivered in accordance with HND timescales under existing regulatory mechanisms.

3.24. We consider that sub-£100m projects can be assessed and funded through the MSIP mechanisms without causing any delays to delivery. Currently the MSIP re-opener only has a single annual re-opener window which we acknowledge may not provide the necessary flexibility to accelerate projects if TOs have to wait for the window to open until they are able to make an application. Therefore, we intend to modify the Electricity transmission licence (Special Condition 3.14) to increase the frequency of re-opener windows and will consult on licence modifications in early 2023.

3.25. We considered consultation responses that suggested that we refine the third ASTI criterion that there is clear evidence that the expected consumer benefits of applying the accelerated delivery framework to the project exceeds the expected consumer detriment. Ofgem's principal objective (as defined in s.3A of the Electricity Act 1989) in carrying out its functions is to protect the interests of existing and future consumers in relation to electricity conveyed by distribution or transmission systems. It would be entirely contrary to that principal objective if consideration of consumer benefit was not considered as part of the ASTI framework. We will therefore continue to apply the third criterion as consulted on.

3.26. Some stakeholders were concerned that introducing the ASTI framework could create a "two-tier" regulatory system where non-ASTI work gets deprioritised. However, we consider that there are adequate regulatory mechanisms already in the licence (for example PCDs) to ensure that this does not happen and that all projects, ASTI or otherwise, are delivered in a timely manner by their optimal delivery dates, with enforcement options available should this not materialise in practice.

3.27. We disagree with the view that the ASTI framework should be applied to all large onshore transmission projects, not just those included in the HND. The rationale for introducing the ASTI framework is to accelerate project delivery. Where delivering at pace is not the only driver, we consider that on balance the LOTI framework provides more protection to consumers than the ASTI framework and better serves the consumer risk-profile as consumers are not exposed to additional costs should a project not obtain planning permission. It also allows for projects to be delivered via models of competition, which we consider is in the long-term interest of consumers. If we are satisfied that future projects can be delivered by their optimal delivery dates under LOTI (or by competitive tendering) then we see no compelling justification to apply the ASTI framework to these projects.

4. Competition exemptions for strategic projects

Section summary

We set out our Decision on exempting strategic transmission projects from delivery through a competitive tendering model.

Background

4.1. Competition in delivery of onshore ET infrastructure is a key component of the RIIO-ET2 framework and at RIIO-ET2 Final Determinations we confirmed our intention to consider competition for qualifying, large ET infrastructure projects.[27]

4.2. Changes to primary legislation to enable the competitive tendering to third parties for qualifying ET infrastructure projects were recently introduced by Government as part of its Energy Security Bill.[28] While this legislation is expected to be in place from 2023, given the need for subsequent regulatory arrangements to allow onshore competitive tenders to be run we do not anticipate that competitions in networks will be able to commence before the end of 2024.

4.3. The TOs have stated that the introduction of competition could lengthen the existing timelines for delivering new onshore ET projects due to (i) the time taken to run a competitive tender and (ii) not having confidence to procure early and invest in early construction works (see Chapter 4 in the consultation document for further details).

4.4. We do not consider that there is any evidence to suggest that third-party delivery of strategic projects through onshore competition would take any longer to deliver than TO delivery. However, we do recognise that ahead of the implementation of the relevant legislation and regulatory arrangements, there may be projects where uncertainty around whether the TO will deliver the project could cause delays. In order to meet the Government's 2030 ambitions, TOs will need to start engaging with the supply chain and progress pre-construction and construction work on ASTI projects as soon as possible. It is likely that this engagement will need to start before the enabling legislation and regulatory arrangements are likely to be in place to allow for an onshore competition to be run.

[27] RIIO-2 Final Determinations for Transmission and Gas Distribution network companies and the Electricity System Operator | Ofgem
[28] https://www.gov.uk/government/collections/energy-security-bill

4.5. For this reason, the Government (as part of the ESS and ENSF) asked us to consider exempting from competition all (or some) of the strategic onshore ET projects identified as critical to meet its 2030 ambitions, where this is in the interest of consumers.

Consultation position

4.6. In our consultation we set out our approach to exempting strategic projects from competition, categorising the 26 projects on initially proposed list of ASTI projects as:

- Projects that the ESO does not consider likely to meet the criteria for competition[29] (5 projects, worth £0.7bn)[30]

- Projects we consider are unlikely to be delivered through competition without the risk of delays (5 projects, worth £4.1bn)[31]

- Projects the ESO has identified as needing to be delivered before the current EISD and by 2030 (10 projects, worth £10.6bn)[32]

- Projects with 2030 EISDs (6 projects, worth £4.3bn) where a better understanding of the relevant probability of delivery by the 2030 EISD is needed before we can decide if it is appropriate to exempt from consideration for competition[33]

4.7. We also stated that we did not yet have ESO data identifying the benefit associated with each individual project. Therefore, our minded-to position to exempt projects from competition would be contingent on confirmation through additional analysis that each project is likely to deliver benefits that offset the cost to consumers of foregoing the expected benefits that would be achieved through competition.

4.8. We consulted on two options for exempting competition:

- **Option 1**: Exempt all 26 projects from consideration for competition, subject to the additional network studies referenced in paragraph 6.30 of the consultation.

[29] Criteria is that projects must be new, high-value (£100m+) and separable
[30] DWNO, EDEU, HWUP, PTNO, TKRE – see appendix 1 for project details
[31] BTNO, E2DC, E4D3, OPN2, PTC1 – See Appendix 1 for project details
[32] BLN4, BPNC, CGNC, E4LF, EDN2, GWNC, LRN4, PSNC, TGDC, TKUP – see Appendix 1 for project details
[33] AENC, ATNC, BBNC, PSDC, SCD1, SLU4 – See Appendix 1 for project details

- **Option 2**: Exempt 20 of the 26 projects, subject to the additional network studies referenced in paragraph 6.30 of the consultation. Under this option, only the six projects with a 2030 EISD (and that meet the competition criteria) would be considered for potential delivery via competition.

4.9. We stated that our minded-to position was Option 2. However, we noted in the consultation TO concerns that not exempting these projects from competition could maintain uncertainty around whether they will deliver the project, meaning they will not be able to mobilise supply chains and invest in early construction works. As such, we stated we would be open to exempting all 26 projects included in the scope of consultation from competition if the TOs can demonstrate doing so is in consumers' interests.

Summary of consultation responses

4.10. The majority of respondents (23 out of 36), including all TOs, agreed with the proposal to exempt projects from competition where it is in consumers' interests to do so.

4.11. The TOs highlighted concern that uncertainty around the timing of competition legislation being introduced and the capacity of the ESO to run multiple tenders would impact the ability of third parties to deliver projects by 2030. TOs, and a number of suppliers, also stated that to deliver projects by 2030 they will need to engage supply chains and secure cable manufacturing slots early and therefore need certainty around who will ultimately be the responsible delivery body for all projects before investing.

4.12. Many respondents, including consumer groups, were supportive of the principle of competition generally but favour exemptions where they support the accelerated delivery of strategic projects.

4.13. Ten respondents, including all TOs, preferred exempting projects in line with Option 1 (see paragraph 4.8 above). Four respondents preferred Option 2, and one Offshore Transmission Owner (OFTO) proposed that all ASTI projects should be eligible for Late Competition. One Distribution Network Operator (DNO) disagreed with both options and argued that an assessment should be made on a project-by-project basis instead of blanket exemptions.

Decision

4.14. We have decided to exempt all but two projects (PSNC & LRN4) from the initially proposed list of 26 projects in our consultation, along with an additional two projects (Western Isles link & BDUP, see Appendix 1) which were proposed following the consultation.

4.15. We have decided to defer the decision on whether to exempt the asset classification projects (see Appendix 1) until the TOs have developed sufficiently detailed delivery plans for them, with target delivery dates that can be incorporated into the ASTI ODI.

Rationale for our decision

4.16. We continue to consider that once early and late competition models have been implemented and integrated into the network planning process, projects can be delivered through competition models on time whilst driving significant savings for consumers.

4.17. We do however acknowledge that the current uncertainty around the exact timing of the enabling legislation and the finalisation of competition models remains, and this has the potential to cause project delays. This is because without sufficient certainty as to whether the TOs will be the delivery body, they will be unlikely to make the upfront financial commitments needed to allow for accelerated project delivery. In many cases, we agree with TOs that providing competition exemptions as part of ASTI will better enable them to mobilise their supply chains and procure long lead items such as HVDC cable, in what is currently a constrained and highly competitive market due to the scale of investment under ASTI and increased global demand.

4.18. There were some concerns raised in responses around whether exemptions should be made for all projects, and uncertainty around whether competition would cause delays. We have reviewed the delivery plans for each project individually when considering exemption from competition. We have also looked at constraint impacts along with other risk factors such as uncertainty around competition legislation, and wider benefits of achieving the ambition of ASTI (further detail chapter 6 CBA methodology) when coming to our decision to exempt these projects from competition.

4.19. We agree with the ESO that there are certain projects with EISDs of 2030 or earlier with delivery timelines that would suggest in principle could be competitively tendered without causing delay. However, other factors (as listed below) have tipped our decision in favour of competition exemption as we consider this poses less risk to late delivery than not exempting them.

4.20. Specifically, we considered the following factors to determine whether it was necessary to exempt projects in order to achieve the benefits outlined in our CBA:

- Whether projects meet the competition criteria[34].

- Whether competition legislation will likely be in place in time to enable competitions for the projects without causing delay compared to their EISD. We have centred this assessment around those projects in the TO delivery plans where our assessment indicates that construction contracts will need to be in place ahead of the earliest date at which a late competition for delivery would be able to be run.

- The level of Uncertainty around how many projects the ESO will have the capacity to tender within the required timeframe.

- The risk of global supply chain issues: items such as HVDC cable are in very high demand globally as countries push for energy security and renewables. There is a risk of delays if items such as these are not procured early and if supply chains are not mobilised early (which competition exemptions would allow for).

4.21. We also agree with the view that due to interlinkages in project delivery, tendering some projects may increase the risk of delays to the group as certain factors such as outage periods need to be coordinated.

Rationale for not exempting projects that face delivery plan uncertainty.

4.22. There are some projects that have not yet been developed enough that we can make assumptions as to whether consumers would benefit from them being exempted from competition. Specifically, the two projects PSNC and LRN4, which NGET has informed us it cannot commit to delivering by 2030. These projects are expected to undergo considerable revisions to the optioneering and routing before a delivery plan can be formulated.

4.23. There are also the 6 projects recently identified in Ofgem's asset classification exercise[35], which are in very early stages of conceptualisation, and as such have considerable uncertainties around design and delivery.

4.24. Until the design uncertainties of PSNC, LRN4 and the 6 additional projects are addressed, these projects will not be included in the list of ASTI projects and we will only

[34] Projects eligible for competition must be new, separable, and high value (over £100m)
[35] Offshore Transmission Network Review: Decision on asset classification | Ofgem

consider including them, and whether to exempt these projects from competition, once we received robust delivery plans for them.

Why we are exempting the other 8 post-2030 projects - Net consumer benefit of acceleration outweighs competition benefit.

4.25. We have decided to exempt the remaining 8 out of the 10 projects (all other than PSNC and LRN4) with EISDs later than 2030. TOs have provided delivery plans that provide for accelerated delivery to the year 2030. Changes to the regulatory process and competition exemption are key factors in them achieving these accelerated dates. We consider that not exempting these projects would lead to uncertainties around delivery and would risk causing delays. Our CBA analysis of accelerating these projects to 2030 as per table 7 in Chapter 6, which uses constraint data provided by the ESO, shows a clear net benefit of accelerating these projects. This is based on our consideration that competing the projects would not achieve the same level of acceleration.

Why we are exempting the 6 projects we said were under consideration in the consultation - EISDs of 2030.

4.26. We have decided to exempt from competition the 6 projects we proposed not to exempt in our consultation, as per Option 2 in paragraph 4.8 above. Although the outcome of the constraint impact versus competition savings CBA only marginally supports competition exemption for these projects there are other factors we have considered. We have reviewed the delivery plans for each of these projects to consider the likelihood that they could be competed without causing risk to late delivery. Due to uncertainty around when competition enabling legislation will be passed, how many projects the ESO will be able to compete initially, and exactly how early engagement with contractors will need to be to ensure timely delivery, we consider that TO delivery presents less risk than the alternative for these projects. Additional impacts of achieving 2030 targets (as mentioned in paragraphs 6.15-6.20) supported our decision to exempt from competition in order to increase the chance of 2030 delivery.

Why we are exempting the 10 pre-2030 projects

4.27. We have decided to exempt 10 projects with an EISD before 2030 from competition. This is because these projects either do not meet the criteria for competition or need to start construction sooner than our current expectation for when competition legislation would be on the statute books to allow.

Why we are exempting Western Isles and BDUP

4.28. We have decided to exempt an additional two projects that were proposed by respondents to our consultation: the Arnish to Beauly 1.8GW HVDC link (Western Isles link) and uprating the Beauly to Denny 275 kV circuit to 400 kV (BDUP), which will be delivered by SHET.

4.29. We are exempting the Western Isles link for two key reasons. Firstly, assessment of the accelerated delivery would suggest that TO delivery presents less risk to timely delivery than the counterfactual option of waiting for competition legislation. Secondly, the Western Isles link is a prerequisite for the HND and so is expected to connect a significant amount of offshore wind, any delay to this link would mean a notable amount of the 50GW offshore wind generation target would not be able to safely connect. Unlike other projects that were not identified in our August consultation, SHE-T have prepared a detailed delivery plan for delivery in 2030. We consider it appropriate therefore exempt it from competition to allow its delivery to be accelerated.

4.30. The Beauly-Denny upgrade project (BDUP) was not included in the 26 initially proposed projects in our consultation due to it receiving a "Hold" signal in the NOA Refresh[36]. Since publication TOs have demonstrated the requirement for them to have upfront certainty on this project. The primary requirement being the interlinkages between delivering this project and others in close geographical proximity. By having assurance that it will be responsible for delivering projects, SHET will be able to reduce the risk of delay by procuring long lead items and coordinate outage periods and other delivery aspects with the other projects in the same region.

Table 4: A list of all projects confirmed as exempted from competition.

Projects Exempted from Competition				
AENC	BTNO	EDEU	PTC1	TKUP
ATNC	CGNC	EDN2	PTNO	Western Isles link
BBNC	DWNO	GWNC	SCD1	
BDUP	E2DC	HWUP	SLU4	
BLN4	E4D3	OPN2	TGDC	
BPNC	E4L5	PSDC	TKRE	

[36] NOA Refresh: download (nationalgrideso.com)

5. Changes to our assessment and funding process to support accelerated investment delivery

Section summary

We set out our Decision on streamlining the project approval and funding processes in support of accelerating network delivery.

Background

5.1. Under the current LOTI framework[37], for each eligible project the TOs submit an Initial Needs Case (INC) for Ofgem assessment ahead of seeking planning consent[38]. Once all material planning consents have been secured, TOs then seek approval of a Final Needs Case (FNC) before then applying for a PA Direction. The focus of our assessment at this stage will be an assessment of the proposed costs and delivery plan. This process restricts the TOs' ability to access project funding until after planning consents have been secured.

5.2. PCF may be provided for LOTI projects and full project funding is only allowed at the PA stage. The time from the submission of the INC to the assessment of costs can take up to 5 years.

5.3. In our consultation, we stated that we consider the LOTI process could be shortened by accepting the need for strategic projects without the requirement for the TOs to submit an INC and FNC, and by providing early certainty of project funding before the detailed project design is known and planning consents has been secured.

5.4. We also identified additional risks to consumers from changing the regulatory approval process to support accelerated delivery, specifically that (i) providing early funding certainty could expose consumers to abandoned costs on projects that then fail to secure planning consents, and (ii) funding projects when project drivers, scope, design and costs are less certain potentially exposes consumers to inefficient and excessive costs.

5.5. While acknowledging that modifying the regulatory approval process creates additional risk for consumers, our initial analysis suggested that the potential consumer detriment is likely to be outweighed by the potential benefits in terms of reduced constraint

[37] Special Condition 3.3 (LOTI Re-opener Guidance)
[38] Unless we have relieved the TO of the requirement to submit an INC

costs through accelerated delivery. As such, our consultation stated our openness to changing the current regulatory process to facilitate delivery of the Government's 2030 ambitions.

Consultation position

5.6. We consulted on a funding model toolkit with four potential approaches that would apply to all strategic projects that meet the qualifying criteria for inclusion within our accelerated delivery framework:

- **Approach 1**: Early acceptance of strategic project need on a programmatic basis for all qualifying projects (without endorsing particular design choices or costs), with acceptance of project need providing an early signal for the TOs to proceed with pre-construction work for these projects.

- **Approach 2**: Approval of allowances for qualifying projects in stages: one stage for early construction funding in advance of any planning permission, and a second stage for a full project cost assessment after planning permission is granted. We stated that for the first stage, where it was in consumers' interests to do so, we could group projects to increase the speed in decision-making and minimise the regulatory burden. For the second stage we stated an expectation that the full cost assessment would be consistent with the current project assessment phase of the LOTI process.

- **Approach 3**: Early (pre-planning) approval of full project costs for qualifying projects, subject to a review after planning permission if material changes in project scope or costs.

- **Approach 4**: Pass through of full project costs for qualifying projects, subject to a cap.

5.7. We consulted on a minded-to position of a combination of Approach 1 and Approach 2. We also stated that due to the higher risk to consumers associated with Approaches 3 and 4, were we to adopt either of these we would expect much stronger consumer protection measures to be put in place.

5.8. Regarding the TOs' project submissions, we proposed that where evidence from competitive tenders is not available, we may be open to considering alternative sources of evidence if that evidence is sufficiently robust (i.e. to support the setting of allowances). We requested that the TOs put forward proposals for the information they are able to

provide, which we would then intend to review and issue targeted guidance on our expectations.

Summary of consultation responses

5.9. The vast majority of respondents (25 out of 36), including all TOs, agreed that without upfront certainty the TOs will face significant difficulties mobilising the supply chain. A number of respondents, particularly suppliers, highlighted the current constraints in the supply chain due to increased global demand, particularly for HVDC cable.

5.10. A number of suppliers responded that without early and firm commitments from the TOs they will not be able to build the required capacity and resources to deliver by 2030 and proposed a collaborative TO-supplier approach to deliver the required work on a programmatic basis.

5.11. One OFTO stated that there is insufficient evidence regarding difficulties TOs would face mobilising supply chains and sought more clarity on exactly how the proposed arrangements would benefit consumers while a generator responded that not enough analysis had yet been carried out to reach a view.

5.12. Most stakeholders who responded agreed that streamlining the regulatory process is in the consumer interest and were supportive of our proposals, with a general view that the impact of project delay is likely to far outweigh any additional cost impacts.

5.13. A local stakeholder group expressed support for the proposals provided local communities are not disadvantaged, while a supplier responded that acceleration would also require streamlining of contractual processes and a standardised approach to project design and delivery.

5.14. There were mixed views from stakeholders regarding our proposed options for streamlining the regulatory process, with twenty respondents expressing at least one preference. Stakeholders identified advantages and disadvantages for each option, however there was general support for our preferred approach that would give early acceptance of project need in principle and take a staged approach to project funding.

5.15. Option 1 was preferred by 12 respondents and Option 2 by 15, with the TOs proposing a mix of these options. Option 3 was preferred by 6 respondents, and Option 4 preferred by 4. Two stakeholders proposed that a programmatic approach should be considered for funding and approving a portfolio of projects rather than doing so on a project-by-project basis.

Decision

5.16. We have decided to streamline the regulatory approval and funding process by implementing a hybrid model that incorporates elements of Approaches 1, 2 and 3 in paragraph 5.6, as summarised in Table 5 below.

Table 5: ASTI funding and approval process

	Funding	**Assessment**	**Output**	**Re-opener submission window**
Pre-construction	2.5%	None	Submit planning application	Any time
Early construction	Up to 20%	Light-touch assessment of reasonableness of proposed activities. No cost assessment, which will be undertaken on a full project (excluding pre-construction) at the next stage	None	2023, 2024, Ofgem-triggered re-opener
Full project allowance	100%	Full project and cost assessment	Deliver project	After planning application submitted

5.17. We accept there is a strong case, in the case of ASTI projects, for deviating from the current LOTI process in order to meet the Government's 2030 ambitions. We recognise that the TOs may need to change their delivery models and incur some early construction costs ahead of receiving planning permission in order to meet target delivery dates. We think that the new ASTI approval and funding model can support the TOs by accelerating the regulatory funding and approval processes, while still ensuring consumers are protected by robust cost assessment and clear output deliverables.

5.18. We have decided to create a pre-construction cost funding provision within the ASTI framework of 2.5% of the total forecast totex for ASTI projects, excluding any project for which pre-construction funding has been provided through alternative price control mechanisms. The TOs would be able to use this funding for qualifying pre-construction activities with a new PCD output to submit a complete planning application. Where additional pre-construction works are required, for example to deliver the asset classification projects and LRN4/PSNC, or where efficient pre-construction costs are expected to be materially in excess of 2.5% of forecast totex across the ASTI programme for each licensee, there will be a re-opener mechanism that would allow adjustments to allowances as appropriate.

5.19. TOs will be able to access early-construction funding of up to 20% of forecast totex across the ASTI programme to allow certain pre-agreed activities to be undertaken ahead of planning permission where TOs can demonstrate that it is reasonable to undertake these activities early in order to meet target delivery dates. However, totex allowances for efficient costs covering full project costs (excluding pre-construction costs) will be determined following a full cost assessment after planning applications have been submitted. There will be a re-opener mechanism to allow adjustments to be made to these allowances following material changes to project scope/costs.

Rationale for our decision

5.20. Our principal objective is to protect the interests of current and future consumers. Given the consumer benefits that are likely to result from accelerating the delivery of ASTI project, we consider that this model strikes the appropriate balance between providing funding certainty, flexibility, accelerating delivery and resource requirement, and this streamlined approach provides a regulatory platform that can facilitate the TOs to deliver the Government's 2030 ambitions.

Pre-construction funding (PCF)

5.21. We recognise that many of the ASTI projects[39] are at an early stage of development and TOs will need early access to PCF in order to accelerate them. We will provide PCF for the TOs' portfolio of ASTI projects set at 2.5% of current forecasts of total project costs.[40] We think 2.5% is an appropriate level given the TOs' historical outturn pre-construction costs for delivering large transmission projects.[41]

5.22. We have decided that the PCF under the ASTI framework would be available to fund qualifying pre-construction works. We see no compelling justification to move away from the list of activities that currently qualify for PCF under the LOTI framework. We consider that setting an upfront level of funding across their portfolio of projects that is consistent with previous performance is a sensible means of avoiding a protracted assessment process across a large number of projects whilst ensuring that consumers are not exposed to unnecessary levels of funding being provided upfront.

[39] Throughout this document "the ASTI projects" refers to the list of ASTI projects - the projects in scope for the ASTI framework. These are listed in table 2.
[40] Excluding projects for which PCF has been, or will be, provided under the LOTI process.
[41] RIIO-ET2 Draft Determinations, Table 19

5.23. The TOs are allowed to substitute PCF allowances between ASTI projects, excluding projects for which funding has been, or will be, provided through the LOTI process. This reflects the programmatic nature of the TOs' delivery plans and allows maximum flexibility and reduces the likelihood that TOs will need to trigger a re-opener and request additional allowances (see paragraph 5.26 below).

5.24. PCF allowances will be treated as Use-It-Or-Lose-It (UIOLI) allowances with funding linked to a PCD output to submit a suitable planning application. Any unspent allowances will be returned to consumers in full. We think this approach, rather than allowing PCF as Totex subject to the Totex Incentive Mechanism (TIM), better reflects the nature of the accelerated delivery approach. It is of critical importance that TOs invest sufficiently in their pre-construction activities to submit high quality planning applications that minimise the risk that planning does not get approved. Whilst we endeavour to incentivise efficient expenditure wherever possible through the TIM, the TOs' primary focus should be on acquiring planning permission rather than on an efficiency incentive, and we consider a UIOLI approach with a re-opener mechanism best supports the ambition of high-quality and robust planning applications. This reduces the risk that projects are delayed due to planning reasons, and reduces the risk that early construction expenditure incurred ahead of planning permission is not wasted, at potentially significant cost to consumers.

5.25. We also considered assessing the TOs specific requests for PCF based on their delivery plans and setting efficient costs following a cost assessment. However, this approach would take considerable time before we could reach a decision and considerable resource to assess funding requests across such a large range of projects, which we do not consider consistent with the general approach of streamlining and accelerating the regulatory process. Our decision to set allowances as a proportion of estimated total project costs means we do not need to undertake an assessment of efficient pre-construction costs and TOs can immediately start investing in the development of ASTI projects.

5.26. We will include a PCF re-opener mechanism so the TOs can apply for additional funds if material[42] costs in excess of allowances across the ASTI programme have been, or are expected to be, incurred delivering the PCD outputs. We will also make provision for an Ofgem-triggered re-opener for exceptional circumstances where TOs need to apply for funding outside of the re-opener windows in order for projects not to incur delays in

[42] The materiality threshold is 0.5% of average annual base revenue for each TO, as set out in Special Condition 1.1 (Part B: Definitions) of the licence

delivery. Full details of this mechanism will be included in the ASTI Governance document, to be consulted on in 2023.

5.27. Some projects in the list of ASTI projects have already received PCF under LOTI in RIIO-ET2. Projects that have already received PCF under LOTI are not eligible for additional PCF under ASTI and no further PCF allowances will be provided through the ASTI framework. Substitution of allowances is permitted only between projects that have not yet received PCF under LOTI. With regards to projects that received PCF funding through LOTI, the conditions attached to their PCF still applies. We consider this appropriate as the LOTI PCF allowances were set following a cost assessment by Ofgem and we consider the allowances already provided to be the efficient cost of delivering the PCF output.

Early construction funding (ECF)

5.28. We will provide the TOs with ECF to fund early construction activities required to accelerate delivery of ASTI projects ahead of receiving planning permission, up to 20% of the forecast total project value. In principle, eligible early construction activities could include:

- Strategic land purchases
- Early enabling works
- Early procurement commitments
- Other activities approved in advance by Ofgem

5.29. These activities are typically classed as construction activities, as they relate to delivering the projects. They differ from pre-construction activities, which are the activities required to secure planning consent for a project.

5.30. We have assessed the TOs' delivery plans and while we have a good understanding of the type of activities requiring early construction expenditure, there remains a lot of uncertainty around costs until the TOs have further engaged with the supply market. We need to balance the provision of ECF to accelerate delivery with the consumer exposure to abandoned costs should projects not end up obtaining planning permission. We consider that limiting expenditure to 20% of project value before obtaining planning permission

strikes the right balance, and this threshold is consistent with the estimated early construction costs provided by the TOs in October 2022.[43]

5.31. Our aim is that TOs will be able to apply for ECF in two re-opener windows, one in summer 2023 and the second in summer 2024,[44] and there will be provision for an Ofgem-triggered re-opener should allowances need to be adjusted in exceptional circumstances outside of these windows. We consider two re-opener windows strikes the appropriate balance between flexibility for TOs to apply for funding as projects develop with the ability of Ofgem to effectively resource assessment of the submissions.

5.32. As part of these reopener mechanisms, we will undertake a relatively high-level assessment of whether the early construction activities that the TOs propose to incur expenditure on are reasonable. We will not undertake a detailed cost assessment at this stage and we will not form a view on whether the proposed expenditure is efficient. We will undertake a full cost assessment including early construction costs at the project assessment stage.

5.33. Through ECF reopeners, we will seek to provide the TOs with the ECF they request (up to 20% of total project value) provided the need for the activities proposed are accepted by us. This ECF funding should be seen as an 'advance' to accelerate project delivery ahead of the full PA under ASTI where we will set efficient costs allowance for the project (see below). The efficient costs allowance following the PA will then take precedence over any ECF provided in the RIIO-2 Price Control Financial Model (PCFM) (see paragraph 5.39 below).

Early-construction funding re-opener

5.34. Due to the current market volatility and uncertainty around what sort of supply chain commitments TOs will be required to make in order to deliver the ASTI projects by 2030, we have decided to include an Ofgem-triggered re-opener for ECF to potentially adjust allowances in excess of 20% of project value in exceptional circumstances where the TOs can demonstrate that:

- The expenditure is justified and necessary in order to accelerate project delivery

[43] £3.1-3.7bn (2021/22 prices) - Via Supplementary Question (SQ) responses, October 2022
[44] Exact windows to be confirmed following licence drafting engagement

- Not investing will increase risk of project delay

- We are satisfied that the benefit of providing additional allowances outweighs the increased risk to consumers should the project not ultimately secure planning permission.

5.35. We will include further details of this re-opener mechanism in the ASTI Governance document, which we intend to consult on as an Associated Document to the licence in 2023.

Full project assessment (PA)

5.36. We will undertake a full PA under ASTI as we do under LOTI, (which in respect of LOTI, is set out in RIIO-ET2 Final Determinations).[45]

5.37. We have decided not to restrict the timing of potential funding requests, beyond PCF and ECF requests, and so will not implement specific assessment windows into the ASTI licence arrangements. Instead, we expect TOs to submit requests for full project funding any time after the relevant planning application has been submitted. We expect the TOs to keep Ofgem updated with their planned submission timings through the re-opener pipeline process.[46]

5.38. We aim to take as flexible an approach as possible to our cost assessment process and aim to reduce the time it takes for a PA from the current 6-12 months under LOTI to 6-9 months under ASTI and will endeavour to publish a decision on full project allowances on each ASTI project within 6 months of a project receiving planning permission. However, we are mindful that cumulatively, based on the 26 projects currently in the ASTI scope, a 6- to 9-month individual assessment of each project would require a significant level of level of specialist resource and projects will likely all require a full assessment within a relatively compressed timeframe. Therefore, we will continue to work with TOs to consider our approach to cost assessment and ensure that we are able to robustly assess the full scope of ASTI projects, within as limited a time period as possible, without causing any regulatory delay to project delivery (see paragraph 5.45 below). TOs have suggested a range of approaches to address this difficulty; from the joint development of an upfront benchmarking model to provide upfront comfort on costs, to the real-time review of

[45] RIIO-2 Final Determinations – ET Annex Page 71
[46] RIIO-2 Indicative Re-opener application assessment process version 1 (ofgem.gov.uk), paragraph 1.6

procurement activities. We intend to implement a cost assessment process via the ASTI licence condition that allows us to implement a toolkit approach to our cost assessment, which allows us to use a range of cost assessment approaches, including, where suitable the approaches suggested by the TOs.

5.39. For the purposes of the PCFM, ECF allowances will be over-written by final project allowances following completion of the PA. This will be done during the Annual Iteration Process (AIP) that immediately follows the PA. For the avoidance of doubt, as part of the PA, we will not challenge the *need for* any of the early construction activities that we had already approved as part of the ECF reopener process. However, we will undertake an assessment of efficient costs for those activities as part of the PA and allowances would reflect our assessment of efficient costs rather than actual incurred expenditure.

5.40. We acknowledge that there is a balance to be achieved between the amount of regulatory scrutiny that we can apply to (i) assessment of detailed project design choices and costs; and (ii) the requirement to accelerate delivery of the ASTI projects. We consider that our approach is designed to strike the correct balance given the potentially large consumer detriment project delay could cause in terms of increased constraint costs and the assurance we are able to take from undertaking a full PA ahead of allowing full project costs.

Cost and Output Adjusting Event (COAE) re-opener

5.41. We are introducing a COAE re-opener mechanism to potentially adjust outputs, target dates and allowances should there be material changes to the output that is required to be delivered, or where efficient outturn costs deviate +/- 10% from provided allowances. This is similar to the existing COAE mechanism under LOTI; however, we have decided to reduce the materiality threshold from 20% to 10%. We think that this better reflects the volume and materiality of work being delivered under ASTI and provides better protection to both TOs and consumers against systematic over- or under-spends or post-planning approval changes to a project's scope. We will provide additional details around the process for this re-opener in the ASTI Governance document, to be published in 2023.

Consideration of stakeholder responses

5.42. We considered the proposal to retain the option for project delivery through a late competition model however we do not consider this compatible with accelerating delivery of strategic projects. Under a late competition model, TOs develop the projects until planning

has been approved and a Competitively Appointed Transmission Owner (CATO)[47] would then be responsible for the build, delivery and operation of the assets. Due to known supply chain constraints, we do not consider it possible to delay all construction work and run a tender until only after planning has been secured and still deliver the ASTI projects by their optimal delivery dates.

5.43. We note stakeholder comments around taking a programmatic approach to project approval and funding. We recognise that there could be benefits in doing this and a programmatic approach may reflect the more collaborative TO-supplier delivery models the TOs have proposed in their delivery plans. However, we also need to be sure that consumers are protected by only funding the efficient cost of delivering the ASTI projects, and due to significant current uncertainty around final project costs and the detailed project design we believe it is necessary to include an opportunity for us to fully assess costs for ASTI projects once the detailed design is known. We consider that the ASTI process strikes the right balance between more programmatic delivery and consumer protection by providing a substitutable PCF allowance on a programmatic basis ahead of a specific PA once the projects are sufficiently developed.

5.44. We acknowledge the concerns of local stakeholders that streamlining the regulatory process could disadvantage local communities and potentially affect the public consultation process. However, we do not believe the changes we are making will have an impact in this regard. Our decision allows TOs earlier access to project funding, but any regulatory decisions on outputs and allowances will still follow the same statutory consultation process. For projects subject to the ASTI framework, we expect TOs to fully consult with local stakeholders throughout the optioneering process and ensure any planning consultations give due consideration to the views of all stakeholders as required under the Planning Act 2008 and other relevant legislation such as that for Environmental Impact Assessment.

Cost assessment approach

5.45. In August 2019 we published our RIIO-2 tools for cost assessment consultation,[48] setting out the tools and techniques we intended to apply in setting the RIIO-2 price controls for the electricity transmission networks. When assessing costs for ASTI projects we intend to utilise the range of cost assessment tools available to us. However, we

[47] Quick Guide to the CATO Regime - November 2016 | Ofgem
[48] RIIO-2 tools for cost assessment consultation | Ofgem

recognise that the unprecedented scale of projects requiring assessment within a limited time period means we may need to consider novel approaches to our cost assessment.

5.46. We are aware that constraints in the supply chain could mean that suppliers of key long lead time assets may need to be engaged and contracted earlier in the process than has typically been the case, and suppliers may not be willing to hold prices for the duration of a traditional cost assessment. Changes to the TOs' delivery models and the requirement for earlier supply chain commitments mean they require earlier certainty around how we intend to assess costs and set allowances for ASTI projects before they undertake procurement activities.

5.47. We are open to working with the TOs to develop new cost assessment approaches, including new benchmarking models that can be added to our existing cost assessment toolkit and which may help us reach a view on allowances more quickly and mechanistically than under our existing cost assessment approaches. Given the unprecedented scale of the required cost assessments over the coming years we consider there is merit in developing a model that can reduce the resource burden of simultaneously assessing multiple projects and efficiently manage the risks associated with cost uncertainty. However, until these models have been devised, built and tested we cannot say to what extent they can be used to set project allowances and how much weight should be given to them relative to other cost assessment techniques. We will continue to engage with the TOs and will provide further details of our cost assessment approach for ASTI projects in the ASTI Governance document, to be published in 2023.

Non-tendered costs

5.48. Following assessment of consultation responses, we have decided to maintain our consultation position with regards to non-tendered costs. We consider that evidence from competitive tenders is a valuable source of information when setting efficient allowances. In cases where this information is not available, we are open to considering alternative sources of evidence if that evidence is sufficiently robust (i.e. to support the setting of allowances).

6. Updated Cost Benefit Analysis

Section summary

We set out the methodology that we have followed to quantify the costs and benefits associated with the changes to our regulatory framework and competition exemption, to support accelerated investment in strategic onshore ET projects. Applying the methodology, we identify the net benefits to consumers we expect our changes to bring.

Background

6.1. The projects that are included within the ASTI framework include a number of projects that the ESO has identified as needing to be delivered earlier than the TO's view of the appropriate EISD, alongside other projects that the ESO identified as needing to be delivered on, or slightly after the TO EISD.

6.2. The CBA in our consultation focused on the constraint cost benefits of accelerating projects with EISDs beyond 2030 and ensuring timely delivery of the remaining projects. The CBA also made assumptions around additional costs and risks to consumers that could arise under the ASTI framework. These additional costs relate to the potential consumer detriment of missing out on the savings that competition could deliver on these projects, the risks associated with making changes to the regulatory assessment process, and an increase in abandoned costs due to more upfront funding (ECF) being provided before planning and consenting have been approved.

6.3. The CBA in our consultation indicated that as long as TOs were able to commit to meeting the required delivery dates, there was a strong case for developing the ASTI framework and applying competition exemptions for the projects in question.

6.4. In this Chapter our updated CBA has followed the same methodology and approach, but uses updated data on project delivery, costs, and constraint impacts. This updated CBA includes the updates we have made in light of consideration of respondents to our consultation who felt that our CBA did not capture the full range of wider benefits that ASTI can unlock. Specifically, the updated CBA includes a quantitative estimation of the benefit of accelerated carbon emission reduction that implementing ASTI is expected to deliver.

6.5. The updated assumptions, project data, and additional inclusion of a valuation of lower carbon generation, alongside the qualitative benefits indicate that there remains a very clear consumer interest in proceeding with the ASTI changes outlined in this document. The central assumptions used in this CBA suggest a net benefit to consumers of

£2.1bn assuming that the projects are delivered on time. This CBA is intended to be cautious in its approach to stress test the clear benefits of acceleration against a plausible but unlikely level of detriment. We have included a range of sensitivities in Appendix 2, which all indicate that there should be net benefits to implementing the ASTI framework.

6.6. This Chapter provides the information on the consultation responses we received, and how we formed our thinking since our minded to position.

Summary of consultation responses

6.7. Stakeholders were generally supportive of the findings of our CBA but highlighted a number of methodological issues that they disagreed with. A common response was that due to our focus on constraint cost benefits, the overall benefit case for introducing the ASTI framework was likely to be understated due to additional, unquantified benefits that timely project delivery can unlock. Stakeholders proposed a number of additional factors to include in the CBA, including carbon emission reduction, contracts for difference costs, displacement of expensive gas generation and broader environmental benefits.

6.8. While agreeing with the overall conclusion of the CBA, TOs stated that our view on capex savings from competition was too optimistic while our view of abandoned costs was too pessimistic. Some respondents stated that not exempting projects from competition would lead to delays that should be factored into the CBA and also argued that introducing competition would increase financing costs.

6.9. Four respondents raised concerns around the impact of planning reform and business and property prices in the CBA and stated that our assumptions on the likelihood of projects being cancelled are too conservative. Three respondents stated that the merits of the CBA methodology were unclear, that more plausible scenarios should be tested based on the key dependencies identified in the consultation, and that Ofgem overlooked potential increase in costs due to delivery though a concentrated number of organisations. One stakeholder expressed concerns that the impact of 50GW of offshore generation not being delivered had not been considered in our analysis.

Consideration of stakeholder responses

6.10. In terms of the suggestion that competition would increase financing costs, we have seen no evidence to support this view and so have not factored this into our updated CBA. In fact, given the scale of investment needed in the next few years, there is reason to consider that there may be additional consumer benefits in a range of parties other than TOs sharing the costs associated with the financing of such a scale of investment.

6.11. We acknowledge that planning reforms are likely to be vital for the acceleration of these projects. In a number of the delivery plans, TOs have identified an expedited planning process as a key determining factor in whether the optimal date for delivering the projects is achievable. As mentioned in paragraph 2.6, Government has set out its intentions to carry out these necessary reforms. One stakeholder proposed that Ofgem take into account consideration of business and property prices; however, these aspects fall outside the scope of this consultation, as such we have not looked to quantify any such impact. As referenced in paragraph 6.24, we have updated our assumption on project abandonment costs in-line with the relevant details within the TO September delivery plans.

6.12. We have tested a broader range of scenarios in our updated analysis (see below); our analysis now uses a range of 8 to 11 projects assumed competed under the counterfactual. These projects tested are the ones we consider most likely suitable for competition under the counterfactual. This is likely to be higher than the number of projects the ESO could feasibly run competitions for in the run up to 2030 but provides assurance that the benefit case we have calculated for ASTI is suitably robust. This conservative approach has been adopted to consider some of the harder to quantify factors raised by respondents.

6.13. In the ESO's HND report[49] it states that when compared to an optimised radial design, the HND is expected to lead to overall net consumer savings of approximately £5.5bn. This saving comes from an overall reduction in constraint costs, despite the HND having greater capital costs than the radial design. This figure is predicated on the HND being delivered by 2030, which we have established is not possible until the projects included within the ASTI framework are delivered. Therefore, by implementing the ASTI changes, we will be facilitating the HND benefits of up to £5.5bn.

6.14. This benefit is based upon the whole HND being in place, consequently it is impossible to say with any level of accuracy, exactly how much of it would be lost if any individual project were to be delivered late. As such, we have not looked to quantify this in our CBA; however, we do consider it a very significant and likely additional consumer benefit and supporting argument for implementing the ASTI changes.

Updated CBA

[49] A Holistic Network Design for Offshore Wind | National Grid ESO

Quantitative, Qualitative & additional factors considered

CO_2 and Constraint Impact

6.15. In our consultation we asked the ESO to provide us with constraint impact data for the acceleration and delay of the proposed ASTI projects. This data includes a forecast change in the megatons of carbon produced and uses the traded price of carbon to quantify the equivalent cost to consumer associated with this.

6.16. The ESO was able to provide us with CO_2 impacts for the delay / acceleration of many, but not all, of the projects in the time available due to the complexity of the modelling involved. Our analysis focuses on two groups of projects: those with EISDs of 2030 or earlier and those with EISDs later than 2030 that need to be accelerated. We received CO_2 impacts of accelerating the latter group and calculated carbon values for the Mt of CO_2 saved.

6.17. To improve our updated CBA, we have substituted the traded price of carbon for the Government's carbon value range for these projects. This carbon value range represents an estimation on the broader social and environmental costs of emitting carbon and therefore better reflects the true value to consumers of reduced carbon producing generation.[50]

6.18. Reducing CO_2 output from electricity generation, alongside lowering consumer bills are the key drivers for implementing the decisions laid out in this document. As such, we consider including Government carbon values rather than traded carbon prices in our constraint impact analysis to be a better measurement of the impact of ASTI.

By incorporating the Government's carbon values in our analysis, we have identified an additional benefit (approximately £1.3bn[51]) of bringing forward the projects with post-2030 EISDs to 2030, in addition to the constraint savings.

Lower Cost Generation and Increased Energy Security

---

[50] Valuation of greenhouse gas emissions: for policy appraisal and evaluation - GOV.UK (www.gov.uk) Carbon values represent a monetary value that society places on one tonne of carbon dioxide equivalent (£/tCO_2e). They differ from carbon prices, which represent the observed price of carbon in a relevant market.

[51] This has been calculated using the "Central Series" value from the year 2030 from the Government's Carbon Values. Valuation of greenhouse gas emissions: for policy appraisal and evaluation - GOV.UK (www.gov.uk)

6.19. By enabling the connection of up to 50GW of offshore electricity sooner than would otherwise have happened, ASTI should unlock potential for much lower cost electricity generation in GB. The current gas crisis, and an increasing cost to carbon-intensive energy generation, would suggest that moving towards a higher proportion of renewable energy on our grid would reduce the cost of energy for consumers. There is also the significant added benefit of increasing national energy security if we can move away from imports such as gas. Due to the unpredictable nature of gas prices, and the complexity of the many generation contracts in existence, we have not sought to quantify the impact that the ASTI framework may have on energy prices, or energy security. We do however consider these to be critical additional benefits to factor in when making our decision to implement the ASTI changes.

Other qualitative benefits

6.20. We consider that the majority of the additional benefits referenced by respondents were captured within the CBA in our consultation, either in a qualitative manner, or within the underlying ESO NOA Refresh CBA that identified the required investments in the first place. The range of other factors referenced by respondents to the consultation remain difficult to quantify accurately and reliably. We have therefore considered these qualitatively, particularly as a number of them are partially, or fully incorporated into the underlying ESO analysis within the NOA Refresh.

ODI Impact

6.21. The ODI mechanism, covered in chapter 7, provides rewards to TOs for timely delivery or projects and penalties for late delivery. We have not specifically included potential outcomes from ODI rewards or penalties across the portfolio of projects in our CBA, although we have considered overall upside / downside to consumers when determining the parameters of the ODI. The total rewards to all TOs if all projects subject to ODI are delivered on time is £558m. This would be a cost to consumers but is comfortably offset by the constraint and carbon benefits seen under the three scenarios tested in this CBA.

Updates to our assumptions

6.22. This CBA follows the same methodology as the CBA from our consultation, but with additional factors considered and updates to our input assumptions. It also includes the most up-to-date data on estimated project costs, delivery timeframes and constraint impacts on acceleration and delay.

Constraint Impact Data

6.23. A key difference is that this CBA now uses actual forecast constraint data for all projects[52], whereas in our consultation we had used an assumption of 35-40% of project value to estimate constraint impact for projects that we did not have the data for. The new data suggests a lower value for constraint impact as a proportion of project value compared to our original information.

Project Abandonment Losses (ECF)

6.24. Under the LOTI process TOs do not typically get construction funding until planning and consenting has been agreed for the project; ECF is a unique feature (and risk) of the ASTI process. Both LOTI and ASTI provide PCF, which is at risk equally under both processes. For PCF under ASTI, we are using the same baseline amount as per the RIIO2 price control (2.5% of project cost).

6.25. Following receipt of updated delivery plans, we have updated our assumption on potential project abandonment losses. Our consultation made an assumption that 5%[53] of ECF may be at risk and that 10%[54] of projects would be abandoned (meaning 0.5% of construction would be lost in total). New delivery plans from the TOs following market engagement suggests that they may need to incur up to approximately 15-20% of project costs upfront as ECF in order to secure cable slots and other long lead procurement items. Therefore, we have updated our assumption for project abandonment to 15-20% of project value and maintain the pessimistic assumption of 10% of projects being abandoned (1.5 - 2% total).

6.26. This has been applied to all 26 projects in the list of ASTI projects. Applied across this portfolio of projects means that ~£300-400m is assumed to be lost due to abandoned projects. It is important to note that we view this as a very pessimistic scenario but have applied to this CBA as means of a stress-testing the benefits case of ASTI. This amount has been netted off against the assumed benefits of ASTI.

[52] Other than the Western Isles Link for which we do not have constraint impact data available because it is not included in the NOA Refresh as the project does not provide boundary reinforcement
[53] Early review of project cost profiles suggested approximately 5% would be needed at an early stage. More detailed project plans from TOs suggests this figure is closer to 15-20% of project value.
[54] This is a pessimistic view of project abandonment included within this CBA as a means of stress-testing the benefits case for ASTI.

Changes to the regulatory assessment process

6.27. In our consultation CBA we set out that a more streamlined regulatory assessment process may lead to a reduction in savings achieved through the new cost assessment process compared to that achieved under the Strategic Wider Works programme[55]. Within our analysis, this reduction was applied to all projects assumed *not competed* under the counterfactual (as competed projects do not also undergo a cost assessment, therefore would not see a reduction in cost assessment savings). The projects that this reduction was applied to are listed in columns "Could Not Compete" and "Do not meet criteria / already exempt" in Table 6. Our assumption around this figure remains the same[56] but applies to a different number of projects due to our changed assumptions of which projects could be competed. This value is now £385m and has been netted off against the assumed benefits of ASTI.

Competition

6.28. The assumptions we are using for the expected savings competition could deliver per project remains the same as our consultation position: 10-15% of project value[57]. We are maintaining this assumption as there has been no alternative evidence provided to suggest an alternative range would be more appropriate. Our overall estimation of total loss of competition benefit has changed. This is because, since the consultation, we have been able to consider the assumptions within the TO delivery plans in order to determine a more robust and realistic view of the projects that may be theoretically capable of delivery via competition.

Projects that need to have their delivery date brought forward to 2030

Calculating Acceleration impact

6.29. On timing of delivery, we are maintaining our consultation assumption that all the projects with EISDs later than 2030 are delivered on time for the purposes of our CBA.

---

[55] 472 Strategic Wider Works factsheet_english_web.pdf (ofgem.gov.uk)
[56] Our consultation assumed that our current cost assessment process reduces project costs by 7.6% compared to initial project costs requested by TOs, and that under our new cost assessment this may be reduced by 2.5-3% of project costs.
[57] Project Value is net of 2.5% of total costs, assumed to be spent on project planning by TOs ahead of the competition.

6.30. We have worked alongside TOs and ESO to model the benefit of bringing these projects forward. Full detailed studies of each of the ten projects were required to fully quantify the benefit of bringing each project forward to 2030. This required TOs to model what the network capability (i.e. increased capacity to transport electricity) would be over the ten-year period from 2030 - 2040 with these projects being delivered by 2030 compared to the originally expected dates between 2031 and 2037. The ESO then used this data to model the future dispatch of generation and network flows across the network in each of these two scenarios.

6.31. Not all the projects could have their acceleration modelled on an individual basis due to their reliance on other projects being delivered alongside them to ensure a stable network. Also, the impact (benefit & disbenefit) of PSNC and LRN4 has been removed from this CBA as without a detailed robust delivery plan, we cannot assume that these projects are deliverable by 2030 and as such are not yet confirmed as falling within the ASTI framework.

6.32. The ESO has calculated the benefit of accelerating the 8 projects in scope for acceleration as a group, with all of them being brought forward to a 2030 delivery. The value of the 8 projects accelerated as a group, without carbon values substituted for carbon prices, is estimated to be £1.4bn[58].

Assumptions around competition savings

6.33. For the purposes of our CBA, we have assessed which of these projects we consider could theoretically be competed under the counterfactual (although we have decided to exempt them all from competition for the reasons outlined in chapter 4). There remains some level of uncertainty around exact timings of projects and legislation, and so have considered two scenarios, with the scenario with 11 projects representing a particularly high number of potential tenders ahead of 2030. The intention of this exercise is to assess what we see as a high, but feasible downside to exempting projects from competition. This is to give comfort that we have been conservative in our assumptions to progress with the ASTI changes.

6.34. Having reviewed the delivery plans of these projects, it is not feasible that a competition model can deliver any of these projects by 2030. However, we consider that it

[58] The ESO calculated the benefit of these 8 projects + LRN4, which came to £1.9bn. We have since removed the individual benefit of accelerating LRN4 (3 times the annual constraint impact for this project totalling £513m) as the TO has told us this project cannot be delivered by 2030.

is theoretically possible that 5 of the 8 projects could be subject to late competition and meet the EISD, but not the optimal delivery date. This is because we anticipate that in the counterfactual construction would start late enough that competition enabling legislation may be in place to compete them. We are attributing the disbenefit (£316m[59]) of not competing these 5 projects (worth £2.66bn) in our CBA.

Western Isles Link

6.35. The Arnish to Beauly 1.8GW HVDC link (Western Isles link) has been included in the list of ASTI projects following our consultation. This impact of this project needs to be considered in addition to the other 8 accelerated projects mentioned above. Unfortunately, it has not been possible for the ESO and TOs to model constraint impacts for the Western Isles Link in time for this decision.

6.36. Measuring the impact of not building the Western Isles link is a complicated task, as it will be enabling the connection of 1674 MW of wind farms, both offshore and onshore, to the grid. These wind farms cannot be constrained until connected, so any constraint value would not be an appropriate figure to consider when assessing the impact of delivering this project. The ESO has identified this link as an essential element of their HND. Delaying this link would mean a significant amount of the 50GW offshore wind generation will not be able to connect to the grid by 2030. Resultantly, this would mean consumers lose a huge quantity of low-cost, low-carbon generation. It would also impact on increasing national energy security and sending clear positive signals to renewable energy investors in GB.

Projects that can already be delivered by or before 2030

Quantifying the cost & likelihood of delay

6.37. As per our CBA methodology in the consultation document, we are looking to quantify the benefit of ensuring that these projects are not delivered late. We are changing our assumption of how many of these projects would be delivered late in the counterfactual. We agree with many of our respondents' views that there are significant global market demands for labour and ET components, as well as this being an

[59] We have used the central value from our range of assumed competition benefits, 12.5%. This was applied to total capex remaining after removing 2.5% of project value which we would assume is spent on planning.

unprecedented number of projects needed to be delivered by TOs. We consider these factors pose an increasing risk to late delivery of projects in the counterfactual.

6.38. In our consultation CBA we assumed that half of these projects would be delivered 6 months late in the counterfactual (and that ASTI changes would avoid these delays and associated costs). Following engagement with the ESO, we now consider 12 months to be a more appropriate assumption to use for the purposes of our CBA. 6-month delays are highly unlikely due to the availability of outage windows, which are typically only available in the summer period, meaning if they are missed TOs will likely have to wait until the following summer.

6.39. We have used updated delay regret cost information calculated by the ESO for the "Leading the Way+" Future Energy Scenario (FES)[60] 2021 scenario (LW21+) which underpinned the June 2022 NOA refresh report. The delay regret cost for each project is the additional NPV (net present value) cost to consumers of delaying a project by one year compared to its EISD.

Assumptions around competition savings

6.40. We have considered 17 projects (including the addition of BDUP following our consultation) costing £10.4bn with EISDs of 2030 or earlier for this updated CBA. We have determined which of these projects could theoretically be competed under the counterfactual in order to calculate consumer outcome for our CBA.

6.41. There are 8 projects (£4.6bn) that either do not meet the criteria for competition or have already been exempted from competition as they are already progressing to construction under the LOTI process.

6.42. A further 6 projects (£4.1bn) we consider would not be competed under the counterfactual. This is because, due to uncertainties around competition legislation timing, we do not consider that it would be feasible for these projects to be delivered via a competition model and meet the TO EISDs. Delivery later than the EISDs would therefore lead to additional constraints and therefore additional costs to consumers that would likely

[60] FES are used by the ESO to estimate future generation and demand on the electricity system. The ESO uses the FES to determine which projects are needed and when they need to be delivered by. Future Energy Scenarios 2022 | National Grid ESO

diminish or offset the efficiency savings that our analysis assumes competition will deliver (other factors considered in paragraphs 6.15 - 6.20).

6.43. For the remaining 3 projects (£1.7bn) of these 17 that we consider could be competed under the counterfactual without significant risk of causing delays to delivery, we have assumed a loss from not competing these 3 projects (£202m[61]), along with the 5 post-2030 projects mentioned in paragraph 6.34.

Categorisation of projects for the CBA

Table 6: Categorisation of projects for the CBA

	Projects with EISDs 2030 or earlier			Projects that need to be accelerated to 2030		
	Do not meet criteria / already exempt	Could Not Compete	Could Compete	Could Not Compete	Could Compete	Excluded from list of ASTI projects
	BDUP	BTNO	AENC	BLN4	BPNC	PSNC
	DWNO	OPN2	ATNC	E4L5	CGNC	LRN4
	E2DC	PSDC	BBNC	TGDC	EDN2	
	E4D3	PTC1		Western Isles*	GWNC	
	EDEU	SCD1			TKUP	
	HWUP	SLU4				
	PTNO					
	TKRE					
Sum of Capex	£4626m	£4076m	£1702m	£6693m	£2657m	£3575m

**We have not included a constraint impact benefit for Western Isles link from our CBA as a result of constraint data not being available at the time of publishing. However, we have included it in the calculations of disbenefits. The Western Isles project is discussed further in paragraph 6.35.*

Indicative benefits of implementing the proposed accelerated delivery framework

Table 7: Benefits and Disbenefits of Implementing ASTI (Central Scenario)

	Projects with EISDs 2030 or earlier	Projects that need to be accelerated to 2030

[61] We have used the central value from our range of assumed competition benefits, 12.5%. This was applied to total capex remaining after removing 2.5% of project value which we would assume is spent on planning.

	Do not meet criteria / already exempt	Could Not Compete	Could Compete	Could Not Compete	Could Compete	Excluded from ASTI
Sum of Capex	4,626	4,076	1,702	5,023	4,327	3,575
Loss of competition savings	0	0	-202	0	-514	N/A
Project abandonment costs (ECF)	-182			-164		N/A
Project assessment loss	-239		0	-138	0	N/A
Constraint savings	1,006			2,508		N/A
Net outcome	382			1,692		N/A
Sum	2,074					N/A

6.44. Table 7**: Benefits and Disbenefits of Implementing ASTI (Central Scenario)** depicts how we have applied our assumptions of benefits or disbenefits to each group of projects under consideration for ASTI. It is important to note that the constraint savings for "Projects with EISDs 2030 or earlier" do not include the government's carbon values estimations due to time limitations for modelling. Even without including the carbon values for these projects there is still a clear benefits case for ASTI under all three scenarios, as shown in Table 8. The benefits case would be even larger if it included these values, rather than the ESO's estimation on the traded price of carbon as it does for these projects in the CBA. Waiting for the data on carbon for all of the ASTI projects would have strengthened our analysis further. However, given the need for acceleration and the challenge face, waiting for this information could have led to a delay in our decision, which could have had knock-on effects on project delivery. As such, we considered it appropriate to progress this decision without this additional information (which would have only strengthened our benefits case).

6.45. Table 7 shows our central assumption on all factors. Other scenarios have been tested and are included in Table 8, and further sensitivities can be found in Appendix 2. This central view shows significant consumer benefits from implementing the ASTI changes but makes assumptions around timely project completion as a result of these changes. These benefits have been considered alongside the other significant, harder to quantify benefits mentioned earlier in this chapter when making our decision to implement the changes outlined in this document.

Table 8: Summary of Best, Central and Worst-case Scenarios

	Scenario		
	Worst	**Central**	**Best**
Loss of competition savings	-1,122	-716	-414
Project abandonment costs (ECF)	-395	-346	-296
Project assessment loss	-462	-377	-385
Constraint savings	2,865	3514	4,162
Net Outcome	**886**	**2,074**	**3,066**

6.46. Table Shows that under all of our tested scenarios there is a clear benefits case for consumers to implementing the ASTI measures. Further detail explaining the specific assumptions are found in Appendix 2.

7. Consumer protection measures

Section summary

We set out the measures we will introduce to protect consumers from the exposure to potential additional risk resulting from our modification of the current transmission investment process.

Background

7.1. Our consultation detailed the concerns we have that making changes to the LOTI framework and exempting projects from competition could lead to additional risk and costs to consumers. For example, being exposed to abandoned costs on projects that do not achieve planning permission, reducing the number of regulatory assessment stages, and not benefiting from the efficiencies we have observed through competitive tendering in other parts of the GB energy system.

7.2. Whilst we consider that accelerating delivery of strategic projects may lead to net consumer benefits, as demonstrated in our CBA, these benefits are contingent upon the ASTI projects being delivered by their optimal delivery date. We need to ensure that, if these benefits are not realised and the projects are not delivered on time, that consumers are adequately protected given the risks highlighted above.

Consultation position

7.3. In our consultation we proposed a range of consumer protection measures that could be applied depending on the level of consumer risk in our approach to approving and funding strategic projects.

Accelerated delivery Output Delivery Incentive (ODI)

7.4. We proposed the creation of a new accelerated delivery ODI with the project's optimal delivery date, as determined by the ESO's NOA Refresh analysis, as the target delivery date, with rewards/penalties for early/late delivery against the target.

7.5. We proposed to apply automatic penalties if a project is not delivered by its delivery deadline and automatic rewards if a project is delivered early, unless the penalty or reward is disapplied under the circumstances detailed below.

7.6. We proposed that the penalty and reward rate would be set on a project-specific basis in advance and would be determined as a proportion of the estimated consumer

detriment from delivering late and estimated benefit from delivering earlier than the delivery deadline. We set out our view that the penalty and reward should be set and applied as a daily rate.

7.7. We proposed setting the penalty and reward at 50% of the estimated detriment or benefit (based on estimated constraint costs), with a cap on both rewards and penalties under the mechanism to 15% of the estimated value of the project.

7.8. We proposed to include a mechanism to allow the TOs to apply for any penalties under the ODI to be disapplied (for a limited period) if they were to provide clear justification that delay is caused (or is expected to be caused) by factors outside of their control and the TOs have taken reasonable steps to mitigate the risk of delay occurring.

7.9. We proposed that the TOs will not be eligible for rewards under this mechanism if a project is delayed for any reason, and that the TOs should not be eligible for rewards if a project is delivered early due to circumstances outside their reasonable control.

Licence obligations / PCDs

7.10. We proposed to link price control allowances to clearly specified outputs (including delivery dates) in the relevant TO's licence and set all outputs under the revised framework as LOs.

7.11. We also consulted on whether the use of PCDs concurrently with LOs could provide an efficient means of allowance adjustments while protecting consumers against the risk of non-delivery.

Reduced incentive rates under the Totex Incentive Mechanism (TIM)

7.12. We proposed setting a lower incentive rate under the TIM mechanism in situations where we consider there could be material risk to consumers in providing earlier funding certainty for strategic projects due to greater uncertainty about efficient costs.

7.13. We proposed to do this following a case-by-case assessment of the quality of cost evidence available to use at the time of setting allowances for particular activities (e.g. pre-construction) or entire projects. We proposed determining the appropriate level of the incentive rate in light of this assessment, where the lower our confidence in the quality of information, the lower we set the incentive rate (subject to lower limit of 15%).

Ongoing monitoring and reporting obligations

7.14. We proposed that the TOs submit annual reports to Ofgem setting out the delivery status and forward-looking outlook for all projects included within the framework.

7.15. We also proposed to amend the Electricity Transmission Regulatory Instructions and Guidance (RIGs) framework to require the TOs to submit accurate data on costs incurred at the project level for each qualifying project.

Re-openers to adjust outputs and allowances

7.16. We proposed to put in place a reopener mechanism that would allow outputs and price control allowances to be adjusted (upwards or downwards) if required. We stated our view that the reopener would be based on the Cost and Output Adjustment Event (COAE) mechanism included in the current LOTI process, with targeted changes where necessary to take account of the particular circumstances of the proposed accelerated delivery framework (see paragraph 5.41).

Ex post efficiency review

7.17. We proposed that where there is particularly high consumer risk, we would retain the ability to undertake an ex post review of expenditure incurred by the TOs and look to claw back allowances if we were to find that inefficient behaviour by the TOs led to consumers facing higher costs. This could be in circumstances where:

- TOs face relatively weak incentives to keep costs under control, [and/or]

- There is a relatively low level of upfront regulatory scrutiny of cost submissions, or where the quality of information available is such that we are unable to effectively scrutinise those cost submissions

7.18. We proposed that we would not seek to clawback any expenditure that was efficiently incurred based on information that the TOs could reasonably have taken into account at the time and would not deem expenditure to be inefficient solely with the benefit of hindsight.

Summary of consultation responses

7.19. Overall, respondents were in favour of introducing additional measures to protect consumers and a key theme was that the consumer protection measures should be proportionate and fairly balanced between risk and reward. However, there were mixed views on the specific measures that we proposed. Nine stakeholders supported the measures as proposed, while two disagreed and one agreed with an ex post efficiency

review. Respondents showed general support for a re-opener for COAEs, one respondent was concerned about the danger of penalising TOs across multiple mechanisms, and there were mixed views regarding the strength and application of the proposed ODI.

7.20. TOs had strong views on the proposed design of the ODI. They argued that since the scope for projects being delayed is greater than the scope for them being delivered early, the use of the ESO's delivery dates in the incentive would create an asymmetrical TO risk. In their view this would create an unfair company downside financial exposure that could only be acceptable if combined with a suitable adjustment to the allowed return under the price control. TOs and other respondents also raised concerns that penalties for any failure to reach the ESO's optimal dates would potentially incentivise TOs to seek to use the exceptional events mechanism to excuse delays and pass on risks to contractors, rather than incentivise accelerated delivery.

7.21. One TO raised concern that if the ODI is implemented as proposed, project caps for some projects could be hit very quickly, which means that any incentive to accelerate delivery would be short-lived.

7.22. TOs also argued that the proposed ODI penalty of 50% of the constraint impact of delays relative to the ESO's optimal dates, and the 15% of project value, represented an unacceptably severe potential financial penalty. These arguments focused on the potential downside penalty which could, in certain years, potentially wipe out TOs entire allowed equity return under the RIIO framework. They also argued that it was inappropriate to hold TOs to account for future constraints, which are a result of wider network planning processes and changes in Government policy.

Decision

ASTI ODI

7.23. We will implement a financial ODI to ensure that TOs are incentivised to deliver ASTI projects on time. Since the CBA outcome explained in Chapter 6 is predicated on the timely delivery of these projects to meet the Government's 2030 ambitions, we consider the ASTI ODI to be an integral element of the ASTI framework. As detailed in Table 9, and explained below, we have made adjustments to the design and calibration of the ODI in light of consultation responses and the additional ESO analysis provided on constraint impacts of delays to projects in September.

Table 9: Overview of the ASTI ODI

Feature	Position for consultation	Decision
Basis for setting ODI rates	Reward and penalty rates for each project will be set based on 50% of the forecast constraint cost impact of a one-year delay	Daily reward and penalty rates for each project will be set at 30% of the forecast constraint cost impact of a one-year delay divided by 365
Target delivery dates	The year in which the ESO has required the project to be delivered	31st of December of the year in which the ESO has required the project to be delivered
Application of penalties under ODI	Where a project is not delivered by the target date, penalties at the relevant daily rate would apply from the day after the target date until the date of delivery	Where a project is not delivered by the target date, no penalties would apply for the first 12 months of the delay. Penalties at the relevant daily rate would apply from the first day after 12 months from the target date until the date of delivery.
Application of rewards under the ODI	Where a project is delivered earlier than the target date, rewards at the relevant daily rate would apply for each day between the date of delivery and the target date	Where a project is delivered earlier than 12 months after the target date, rewards at the daily rate would apply for each day between the date of delivery and the last day of the 12th month after the target date
Aggregate project-level cap on rewards and penalties	Aggregate rewards and penalties for each project are capped at 15% of forecast totex for that project	Aggregate rewards and penalties for each project are capped at 10% of forecast totex for that project. In addition, daily rates are constrained so that: a. Rewards and penalties for each project in any 12-month period are capped at 5% of forecast totex. b. Rewards and penalties for each project in any 12-month period are subject to

		a minimum of 2% of forecast totex.

ODI daily rates (reward/ penalty)

7.24. We confirm our view that the daily reward and penalty rates should primarily be based on a forecast of consumer detriment arising from a delay, and on a forecast of consumer benefits arising from acceleration. In our view, constraint costs are the best available valuation of the impact delays and acceleration to consumers. Setting the daily rates in advance allows TOs to appropriately build a calculation of potential exposure into how they arrange their delivery contracts and where appropriate, prioritise and manage risks across projects in line with the respective value to consumers.

7.25. In our consultation we said that we would set daily rates for rewards and penalties at 50% of forecast constraint costs of a one-year delay. In September we received updated estimates from the ESO on the impact of delays and acceleration of each project in the ASTI framework. Our analysis of this data showed that there are a number of projects (with relatively high constraint cost impacts) where the project-level cap on rewards and penalties would be met in a few months if we used 50% of constraint impacts to set the daily rates. This means that the incentive would be particularly short-lived for those projects with the greatest need for acceleration. For the ODI to be effective, it needs to be able to maintain its incentive properties for a reasonable duration.

7.26. We have therefore decided to reduce the proportion of the constraint impact of delay/ acceleration that TOs are exposed to from 50% to 30%. This allows the incentive to persist for longer than it would have done under our consultation position.

7.27. In relation to the aggregate project-level cap, we have considered consultation responses and further assessed the financial exposure to the TOs based on updated costs in the TO delivery plans submitted in September. We have decided to reduce the project-level cap from 15% to 10% of forecast totex for each project.

7.28. Across the £19.8bn of investment across the ASTI framework, we accept the TOs arguments that capping rewards and penalties at 15% of the value of each project has the potential to expose TOs to particularly levels of financial penalties relative to the other incentives within the RIIO-2 package. We are also mindful of the risk that implementing such a high-powered ODI could distort the wider incentives on TOs across the RIIO price control package. On balance we consider that setting the cap at 10% of forecast totex ensures strong financial incentives for timely delivery without exposing the TOs to excessive financial risk which could ultimately increase costs to consumers in the longer term.

7.29. We have also decided to cap daily rates for rewards and penalties for each project at 1/365 of 5% of the forecast totex for that project. This means that rewards and penalties would persist for at least 24 months, which we believe is an appropriate duration for the incentive to have effect.

7.30. At the same time, there are several projects with a relatively low or no forecast constraint cost impact. This does not necessarily mean that there is little consumer detriment from a delay to these projects, or that there is little value in accelerating them. The ESO's estimates of constraint cost impacts only captures part of this detriment and value. For example, there are some projects where the consequence of a delay to the delivery of that project is that offshore generation may not be offered a connection to the network by 2030. In that case, there would be no estimated constraint cost impacts, but the goal of enabling 50GW of offshore wind by 2030 would be put at risk to the detriment of consumers.

7.31. We think it is important that all ASTI projects are delivered on time, and we recognise the critical role that a strong financial incentive could play in achieving this. We will therefore constrain daily rates for rewards and penalties for each project so that they do not fall below 1/365 of 2% of forecast totex for that project.

Target delivery dates

7.32. We have decided to set the target delivery date as the 31st of December of the year in which the ESO has required the project to be delivered as set out in the HND. The choice of year is consistent with our view that the need for these projects is driven by the ESO's HND and the ambitions for new renewable generation to be connected by 2030 that it supports. The Government's ESS, the ESO's HND and the NOA do not specify the required delivery dates at a level of granularity that could inform our choice of date within the year. Given this uncertainty, we think it is prudent to set the target date as 31 December of the relevant year. We recognise that this provides the TOs with additional headroom than alternative approaches (e.g. using the mid-point of the year) might do.

7.33. Whilst we continue to view the ESO's required delivery dates as the appropriate target dates to use, we have decided to change the way in which rewards and penalties would be applied, compared to our consultation position. This is explained further below.

Application of rewards and penalties under the ODI

7.34. The TOs have said that our consultation position to use the ESO's required delivery dates as the reference point from which rewards for early delivery and penalties for late delivery would be applied creates an ODI that is asymmetric and biased towards penalties.

7.35. In our consultation, we recognised that while the proposed ODI is symmetric in principle, the impact of the ODI on the overall balance of risk will depend on how target dates are set. For instance, if the target is set such that the project is more likely to be late than early, a penalty is more likely than a reward for that project, creating the risk of asymmetric outcomes.

7.36. We would have been able to estimate the probability of delivery by the ESO's required dates if we had sufficient information on the probability of distribution of delivery dates for each project. We understand that the TOs do not currently have all the required information to allow us to do this. In the absence of this information, we have relied on a qualitative assessment of the extent to which our proposed approach to setting target dates creates asymmetric risk.

7.37. In our consultation, we had proposed that the target date for each project should be set to match the date by which the ESO has required the project to be delivered. Of the 26 projects that we have decided to include within the scope of the ASTI framework:

- For 13 projects, the ESO's required delivery dates match the relevant TO's earliest in service date (EISD);
- for 4 projects, the ESO's required delivery date is one year later than the relevant TO's EISD; and
- for the remaining 9 projects, the ESO's required delivery date is between one and two years earlier than the relevant TO's EISD.

7.38. The TOs have argued that the EISDs are not 'P50' dates (i.e. the date that has a 50% probability of being met), but rather they are stretching targets that have a lower probability of being met. However, the TOs have not provided sufficient evidence that supports this view.

7.39. We have some concerns about the TOs' view that the forecast probability of meeting the EISD is systematically lower than 50%. We note that the EISDs were produced by the TOs as part of the ESO's NOA process. The ESO's assessment assumes that projects are delivered by their EISDs, and the economic case for those projects might be weaker if this assumption is relaxed. We also note that the EISDs for the projects currently in scope were set before we started work on the ASTI framework – and therefore could not have accounted for the regulatory measures being put in place to support accelerated delivery.

7.40. We accept that the probability of delivery by the ESO's required delivery date is likely to be lower in the case of the 9 projects that are required by the ESO to be delivered earlier than the TOs' own EISDs. These projects account for approximately £9.3bn of the estimated total investment of £19.8bn needed to deliver the ASTI programme.

7.41. Furthermore, the TOs have provided some evidence that global supply chain constraints have increased since the EISDs were set. This means that there is a heightened risk of longer lead times for delivery of materials and equipment, which in turn increases the risk of delays relative to up front assumptions. We are also mindful of the fact that the ASTI programme involves delivering an unprecedent volume of projects at speed. This creates additional challenges in relation to procurement, project management, staffing and coordination with other TOs and stakeholders.

7.42. Taking these factors into account, we have decided that for each project, the 'ODI neutral date', i.e. the date that attracts neither penalties nor rewards would be set at exactly 12 months after the required delivery date.

- Penalties at the relevant daily rate would be applied for each day that the project is delayed beyond the ODI neutral date.

- Rewards at the relevant daily rate would be applied for each day by which the project has been delivered early relative to the ODI neutral date.

7.43. We consider that these changes, along with the other adjustments set out in this Chapter, sufficiently mitigates the risk that the ASTI ODI is asymmetric by design and systematically biased towards penalties. We think it is a strong incentive that rewards acceleration and penalises late delivery in a way that represents the appropriate balance between consumer protection and effective acceleration of key investment.

Treatment of penalties and rewards in allowed revenues

7.44. The current scope of the ASTI framework includes 26 projects that have target delivery dates between 2027 and 2030, with most due to be delivered by 31 December 2030. This clustering of target dates means that if multiple projects are delayed or delivered early, the aggregate impact on ODI penalties and rewards could be relatively high compared to the TOs' annual allowed revenues. This issue could be exacerbated if additional projects are added to the scope of the ASTI programme with similar delivery deadlines.

7.45. If rewards and penalties are fully reflected in allowed revenues in the year that they are incurred, there is the potential for excessive volatility and unpredictability in transmission charges to consumers and revenues to the TOs. To mitigate this risk, we intend to spread the recovery of rewards and penalties over time, for example through an adjustment to the Regulatory Asset Value (RAV).

Treatment of outliers

7.46. In the specific case of the Peterhead to Spital HVDC project (PSDC), the daily rate for penalties and rewards under our approach is more than twice as high as any other project in the ASTI programme. This reflects the circumstances of that project, with both relatively high costs and high constraint impacts.

7.47. While the high daily rate calculated under our approach reasonably indicates that the PSDC project is important, we do not believe that the financial incentive for that project should be more than two times that of the next highest project across all three TOs. Such a large difference between the ODI rates for PSDC and the remaining projects could potentially lead to undue management focus and resource being targeted at PSDC at the expense of other projects. We have therefore decided to set the daily rate for PSDC at the minimum level, i.e. 1/365 of 2% of forecast totex, which brings it in line with the project with the next highest daily rate.

No benefit to the TOs from delays

7.48. We do not consider that it is appropriate for TOs to benefit financially from a delay. If a project is delayed, we will re-profile totex allowances to match the profile of actual expenditure. Furthermore, we expect any payments or credits provided by a supplier or contractor to the TOs as a consequence of a delay (e.g. delay charges, penalties etc) that is in excess of the applicable ASTI ODI penalty in respect of the same project to be passed on to consumers.

Applicable daily rates for current ASTI projects

7.49. Table 10 below sets out the daily rates for rewards and penalties for each ASTI project under the approach set out above. These rates were calculated using forecast constraint cost impacts of a one-year delay provided by the ESO in September 2022, and forecast totex for each project provided by TOs. We intend to calculate daily rates for new projects added to the scope of the ASTI framework in the future using the same approach.

Table 10: Daily rates for rewards and penalties

Project	Description	TO	Target delivery date	ODI neutral date	Daily rate for penalties and rewards (£)
AENC	New 400kv double circuit north E.Anglia	NGET	31/12/2030	31/12/2031	Redacted
ATNC	New 400kv double circuit south E.Anglia	NGET	31/12/2030	31/12/2031	Redacted
OPN2	New 400kv double circuit Norton-Osbaldwick	NGET	31/12/2027	31/12/2028	Redacted
GWNC	New 400kv double circuit Humber-Lincolnshire	NGET	31/12/2030	31/12/2031	Redacted
CGNC	New 400kv double circuit Creyke Beck-Humber	NGET	31/12/2030	31/12/2031	Redacted
EDEU	400kv upgrade Brinsworth-Chesterfiled-High Marnam	NGET	31/12/2028	31/12/2029	Redacted
EDN2	New 400kv double circuit Chesterfield-Ratcliffe-on-Saur	NGET	31/12/2030	31/12/2031	Redacted
BTNO	New 400kv double circuit Bramford-Twinstead	NGET	31/12/2028	31/12/2029	Redacted
PTC1	Cable replacement Pentir-Trawsfynydd	NGET	31/12/2028	31/12/2029	Redacted
PTNO	North Wales reinforcement	NGET	31/12/2029	31/12/2030	Redacted
TKRE	Grain-Tilbury-Kingsnorth upgrade	NGET	31/12/2028	31/12/2029	Redacted
HWUP	Uprate Hackney, Tottenham & Waltham Cross	NGET	31/12/2027	31/12/2028	Redacted
SCD1	Suffolk-Kent offshore HVDC link	NGET	31/12/2030	31/12/2031	Redacted
BLN4	Beauly-Loch Buidhe 400kv reinforcement	SSE	31/12/2030	31/12/2031	Redacted
SLU4	Loch Buidhe-Spittal 400kv reinforcement	SSE	31/12/2030	31/12/2031	Redacted
BBNC	New 400kv double circuit Bealy-Blackhillock	SSE	31/12/2030	31/12/2031	Redacted
BPNC	New 400kv double circuit Blackhillock-Peterhead	SSE	31/12/2030	31/12/2031	Redacted
BDUP	Beauly-Denny 400kv uprating	SSE	31/12/2030	31/12/2031	Redacted
TKUP	East Coast onshore 400kv Phase 2 reinforcement	SSE/SPT	31/12/2030	31/12/2031	Redacted
PSDC	Spittal-Peterhead HVDC reinforcement	SSE	31/12/2030	31/12/2031	Redacted
E4D3	Peterhead-Drax HVDC	SSE/NGET	31/12/2029	31/12/2030	Redacted
E4L5	Peterhead-south Humber HVDC	SSE/NGET	31/12/2030	31/12/2031	Redacted
W.Isles	Arnish-Beauly HVDC	SSE	31/12/2030	31/12/2031	Redacted
DWNO	Denny-Wishaw 400kv reinforcement	SPT	31/12/2028	31/12/2029	Redacted
E2DC	Torness-Hawthorn Pit HVDC	SPT/NGET	31/12/2027	31/12/2028	Redacted
TGDC	East Scotland-south Humber HVDC	SPT/NGET	31/12/2030	31/12/2031	Redacted

ODI penalty exemptions

7.50. We have decided to include a mechanism within the ASTI framework to allow the TOs to apply for a time-limited exemption from ASTI ODI penalties for project delays

caused by factors outside their reasonable control to the extent that they cannot be reasonably anticipated and mitigated through efficient management.

7.51. When considering an application for penalty exemptions, we will apply the following principles:

1. The TOs would be exempted from ASTI ODI penalties for the duration of delay that can reasonably be attributed to factors outside their reasonable control, adjusted for the impact of mitigating measures that a notionally efficient TO acting reasonably would have undertaken.

2. TOs' actions will be assessed against information that could reasonably have been known at the time of the action, rather than with the benefit of hindsight.

3. Penalty exemptions will only be made where delivery times have been materially impacted.

7.52. The nature of factors outside the TOs' reasonable control means that they may not be always knowable in advance, and as such it is not possible to create an exhaustive list of events that would qualify for penalty exemptions. However, the non-exhaustive list below includes potential events or circumstances that, providing they satisfy the principles set out in paragraph 7.51 above are met, we consider could result in a penalty exemption under the ODI (we will provide further details of exemption events and worked examples in the ASTI Governance document, to be consulted on in 2023):

- Delays in obtaining planning approval and consents
- Delays regarding seabed leasing
- War, hostilities, or terrorist events
- Extreme weather conditions (lower than 1 in 10 probability)
- Contractor/supplier/manufacturer insolvency
- Livestock epizootic
- Significant protestor action
- Legal challenge to procurement process by prospective contractor

- Unforeseeable changes in law, regulation, and international treaties applicable to the UK

- Availability of transmission system for Build, Testing and Outages (e.g. if ESO calls planned outage at short notice)

- Unforeseen ground or seabed conditions

- Unavailability of equipment globally in supply chain

- Unforeseen unexploded ordinance (UXO) mitigation

- Archaeological discoveries

7.53. We will set out the process for submitting penalty exemption claims fully in the ASTI Governance document next year following further engagement with the TOs in relation to the following initial plan:

- **Step 1**: TOs notify Ofgem within 45 days of a Delay Event

- **Step 2**: No later than 45 days after the cessation of a Delay Event, TOs submit an application for a penalty exemption, containing:

  A) The nature of the Delay Event and why the TO considers it qualifies for a penalty exemption

  B) The expected project delivery date taking into account the Delay Event and use of reasonable mitigation measures

  C) The proportion of the delay reasonably attributable to the Delay Event.

- **Step 3**: Ofgem assesses the application and publishes a Decision, setting out:

  A) Whether the conditions in paragraph 7.51 above have been met; and if yes,

  B) The duration which ODI penalties will not accrue in the event of a delay to the project

7.54. A penalty exemption under this mechanism does not alter the target delivery date or the eligibility date for rewards under the ASTI ODI. The consumer benefit of accelerating

delivery of the ASTI projects is based on reduced constraint costs, enhanced security of supply and reduced carbon emissions. If the target or reward dates were to move in line with the duration of the penalty exemption and projects do not ultimately get accelerated, consumers would be liable to pay rewards in addition to funding the efficient cost of delivering the project, despite not receiving any of the benefits of accelerating ASTI projects. We do not consider this to be reasonable or appropriate, or in consumers' interests.

7.55. We are aware that some projects that may fall within the ASTI regime are already underway under the LOTI mechanism. There is therefore a possibility that a Delay Event could occur ahead of the implementation of the ASTI framework into the licence, meaning TOs may be unable to notify Ofgem within 45 days of a Delay Event occurring. Once the framework has been incorporated into the licence, for any potential Delay Events that occurred between publication of this Decision and the licence implementation, we will assess any submission from the TOs in accordance with paragraph 7.53 above; however, we will not enforce the requirement that Ofgem need to be notified within 45 days of the event occurring.

PCD and LO

7.56. We have decided that ASTI outputs will be both PCDs and LOs. TOs have expressed concern relating to multiple regulatory mechanisms being in place that could result in being penalised twice for the same activity. We disagree that this would be the case as PCDs and LOs have specific, and separate functions:

- A PCD can allow us to hold the TOs to account for delivering the specific output that it has been funded for, with provision to adjust allowances in the event of ultimately delivering an alternative or equivalent output to that which was funded. A PCD provides protection for consumers while also providing flexibility to the TOs to reflect the unprecedented scale and nature of delivering such a range of projects simultaneously. Under the PCD framework, if a TO does not deliver a PCD, full allowances that were provided can be recovered. However, we do not consider that returned allowances alone are a sufficient to address the consumer detriment from projects not being delivered given the constraint cost impact explained in Chapter 6.

- A LO obliges the TOs to deliver the ASTI projects in support of the Government's 2030 ambitions. Failure to meet a licence obligation would be considered a breach and Ofgem then has the discretion to use enforcement action against a TO, if appropriate.

7.57. We consider these to be separate mechanisms used for separate purposes, therefore we disagree that setting outputs as both PCDs and LOs means TOs are at risk of any 'double jeopardy' penalty for not delivering any ASTI output(s).

Ex post assessment

7.58. We do not see the need for an additional ex post efficiency assessment mechanism to be included within the ASTI framework over and above the provisions already included. Furthermore, the TOs are already under statutory and LOs to operate economically and efficiently and there are existing enforcement mechanisms available to us.

Totex Incentive Mechanism (TIM) sharing factor

7.59. We have decided to retain the ability to set a lower incentive rate under the TIM mechanism in situations where we consider there could be material risk to consumers in providing earlier funding certainty for strategic projects due to greater uncertainty about efficient costs.

7.60. Where appropriate, we will set a lower incentive rate following a case-by-case assessment of the quality of cost evidence available to use at the time of setting allowances. In determining the appropriate incentive rate, we will take account of our assessment of the quality of evidence provided or available to us, where the lower our confidence in the quality of information, the lower we set the incentive rate (subject to lower limit of 15%).

7.61. For the avoidance of doubt, the same lower incentive rate would apply to both under- and overspends against relevant allowances.

Ongoing reporting and monitoring

7.62. We will require the TOs to report progress of each ASTI project's delivery and updated outlook for delivery risk as part of its annual Regulatory Reporting Pack (RRP) submission. We will engage with the TOs and include our expectations for project reporting in the ASTI Governance document, which we will consult on in 2023. We will also make the necessary modifications to the Regulatory Instructions and Guidance (RIGs) as part of the next RIGs process in summer 2023.

Rationale for our decision

7.63. The over-arching theme from stakeholders was that we create an incentive and consumer protection framework that is proportionate, appropriately balances risk and reward, and protects both TOs and consumers.

7.64. We recognise the difficulty in creating an ex-ante framework that can meet stakeholders' expectations given the unprecedented nature of simultaneously delivering such a large quantity of onshore transmission projects and significant uncertainties around supply chain capacity and the ability to deliver by 2030. We consider the framework outlined above does strike an appropriate balance, whereby if the TOs can accelerate projects and consumers benefit from reduced constraint costs, the TOs will receive a proportionate share of that benefit. Likewise, if projects are delivered late and the benefit of accelerated delivery does not materialise, TOs are exposed to a proportionate share of that disbenefit.

8. Financeability and financial risk to the TOs

Section summary

We set out our view on the impact of our Decision on TO financeability and financial risk.

Background

8.1. In performing its duties, Ofgem must have regard to the need to secure that licence holders are able to finance the activities which are the subject of obligations on them. This section sets out our views on financeability and financial risk to the TOs arising from the ASTI framework.

Consultation position

8.2. In our consultation document, we said that our financeability assessment had focused on the RIIO-2 price control period which runs until 31 March 2026. We pointed to the fact that in our RIIO-2 Final Determinations, we expected significant new net zero investment to be funded through within-period uncertainty mechanisms (i.e. reopeners, UIOLI and volume drivers).

8.3. We said that as part of our RIIO-2 financeability assessment, we had considered scenarios with £8bn of additional investment during the RIIO-2 period across the transmission licensees and concluded that that the overall price control package was appropriately calibrated so that the notional efficient licensee can finance its activities and fund the necessary investments in networks. We noted that based on early figures provided to us by the ESO and TOs, the expected additional expenditure across the TOs on qualifying projects within the RIIO-2 period was within the range of scenarios tested.

8.4. We also highlighted that our RIIO-2 Final Determinations had set out the results of detailed analysis of financeability and financial risk for the TOs on a notional efficient operator basis. This included 'stress testing' the overall package by looking at a range of scenarios, including ones that involved significant downside outcomes, specifically Return On Regulated Equity (RORE) underperformance of 200 basis points and a 20% totex overspend. Following this analysis, we concluded that the downside scenarios tested did not raise material concerns about financeability.

8.5. We set out our view that, given the outcome of our RIIO-2 stress tests, the TOs are adequately remunerated within the RIIO-2 price control package to allow the investment

necessary to meet the government's 2030 ambitions to be financed efficiently. We also said that it was not possible to reach a definitive view at the consultation stage on whether the necessary investments would be financeable under future price controls beyond 1 April 2026. We said that we would take account of the need for these investments to be financeable when setting those controls.

8.6. We recognised that delivering unprecedented levels of investment in an expedited manner could lead to higher risk for the TOs, even if our proposed changes to the regulatory framework are not implemented. We said that the TOs may need to use innovative and non-standard contracting and delivery strategies, bringing higher risk of cost over-runs that are not fully recoverable from consumers. However, we also recognised that our proposed framework included measures that could mitigate this risk to the TOs.

8.7. We considered the impact of our proposed inclusion of an ex post review of efficiency as part of the overall framework, and set out our view that this mechanism on its own does not create the risk of an asymmetric downward adjustment to equity returns.

8.8. We then considered the impact of the proposed accelerated delivery ODI on the balance of risk to the TOs. We recognised that while our proposed design for this ODI is symmetric in principle, the impact of the ODI on the overall balance of risk in practice will depend on how the mechanism is calibrated and applied. We said that based on the information available to us at the time, it was not possible to reach a firm conclusion on the balance of risk, and that we would undertake further analysis before we reach our final decision on the calibration of the ODI.

8.9. We also considered the risk that the proposed framework could lead to unacceptably low equity returns under plausible circumstances. We noted that as far as the RIIO-2 price control period is concerned, we had not seen strong evidence to suggest that the introduction of our proposed framework would increase the risk of downside outcomes that would invalidate the results of our previous financeability analysis. In relation to future price control periods, we said that we would work with the TOs to better understand the risk and invited the TOs to provide relevant evidence to support our analysis.

Summary of consultation responses

8.10. All of the TOs, a supplier and an energy company raised concerns that our proposals could cause financeability issues given the scale, complexity and risk of the investment programme, with the TOs stating that Ofgem should undertake a full financeability assessment of the proposed investments and that any decisions on financeability measures should be taken in 2023 rather than at the next price control review.

8.11. All three TOs raised concerns that the proposed accelerated delivery ODI creates unacceptable levels of financial risk for the TOs. Specifically, the TOs said that:

- The proposed ODI target dates were challenging and there is no realistic prospect of early delivery rewards under the ODI. This means that the proposed ODI is asymmetrical and biased towards penalties.

- The proposed cap for rewards and penalties of 15% of forecast totex, and the proposed sharing factor for forecast constraint costs of 50% are both too high and would expose the TOs to excessive penalties if projects are delayed.

8.12. Most stakeholders offered no view on financeability issues, although seven were of the view that our proposals did not create any excessive financial risk.

Decision

8.13. We have a duty to have regard to the need to secure that licence holders are able to finance the activities which are the subject of obligations on them.

8.14. We use a financeability assessment as a last check that, when all the individual components of our decision are taken together (including totex, allowed return, notional gearing, depreciation and capitalisation), the notional efficient operator can generate cash flows sufficient to meet its financing needs.

8.15. The financeability assessment that we carried out as part of the RIIO-2 Final Determinations gives us confidence that the notional efficient TO is adequately remunerated under the RIIO-2 price control package to allow the investment necessary during the RIIO-2 period to deliver the ASTI programme. We discuss the rationale for this below.

8.16. We will continue to have regard to financeability, including at the point of the next price control review, which would take into account the investment needed to deliver the ASTI programme as determined at that time.

8.17. As set out in Chapter 7, we have decided to implement a timely delivery ODI that includes financial rewards and penalties to incentivise the TOs to deliver the ASTI programme on time. The ODI is calibrated so that the financial risk exposure to the TOs is expected to be significantly lower than the exposure under the ODI as proposed in our consultation document. We consider that the changes that we have made to the ODI, when

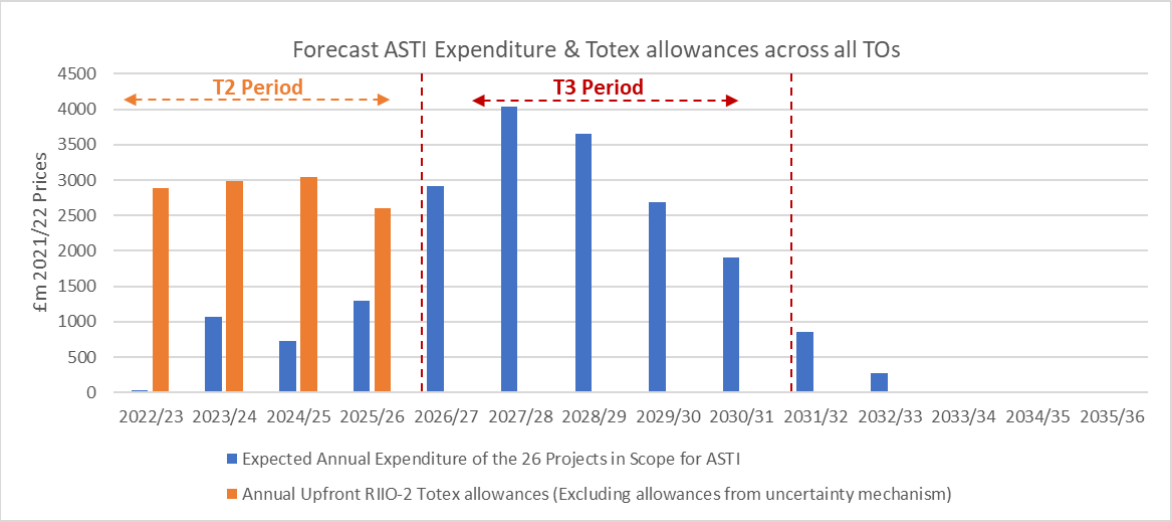
viewed in conjunction with the rest of the ASTI framework, are sufficient to address any concerns about financial risk exposure.

Rationale for our decision

Financeability of the ASTI programme

8.18. Following the publication of our consultation, we received initial delivery plans from all three TOs that provided updated views of the profile of planned expenditure on ASTI projects. These are set out in Figure 1 below, which sets out a comparison between the TOs' latest forecasts of expenditure on the ASTI programme and ex ante totex allowances provided to the TOs as part of the RIIO-2 Final Determinations.

Figure 1: Comparison of updated forecast annual expenditure on ASTI projects and annual RIIO-2 upfront totex allowances for all TOs



8.19. The updated figures show that, across the TOs, the planned expenditure on ASTI projects (based on our final view of projects on the list of ASTI projects) during the RIIO-2 price control period (i.e. 2021/22 to 2025/26) is low relative to upfront Totex allowances provided as part of the RIIO-2 Final Determinations. The updated aggregate planned expenditure on ASTI projects in the RIIO-2 period is £3.1bn[62], which is comfortably within the range of additional investment scenarios that were tested as part of the RIIO-2 and were considered financeable.[63]

[62] This figure does not include the relatively small amounts of historical expenditure reported by the TOs on projects that have now been brought within the scope of the ASTI framework.
[63] For the purposes of our RIIO-2 financeability assessment, we considered scenarios with £8bn of additional investment through uncertainty mechanisms across the transmission licensees.

8.20. Accordingly, we remain of the view that the investment required during the RIIO-2 period to deliver the ASTI programme is financeable. We do not consider that the information provided to us by TOs and other stakeholders supports a different conclusion.[64]

8.21. In our consultation, we proposed to undertake a full assessment of the financeability of expected investment on the ASTI programme during future periods at the next price control review (i.e. the review covering the period from 2026/27 to 2030/31). In our view, this would allow a comprehensive and more robust assessment to be undertaken, taking account of all planned expenditure by the TOs and the design of the rest of the price control framework.

8.22. In their responses and in subsequent engagement, the TOs said that given the scale of investment needed to deliver the ASTI programme, there will be a need to raise significant amounts of new capital. It is possible that new debt would put downward pressure on credit metrics, particularly towards the end of the next price control period (if the financial parameters used in the RIIO-2 price control period were rolled forward).

8.23. The TOs said that Ofgem should undertake a financeability assessment of the ASTI programme in 2023, rather than at the next price control review which is expected to conclude in late 2025. They argued that waiting until 2025 would create uncertainty, which could have negative implications on perceptions of risk, which in turn could lead to higher financing costs.

8.24. Whilst we will continue to have regard to financeability, we consider there to be significant limitations to any forecast of credit metrics to the end of the next price control period made in advance of the price control review commencing. Apart from the challenges of forecasting the level of network expenditure needed or service levels in future price control periods, these forecasts are highly sensitive to assumptions about relevant regulatory finance parameters that are yet to be consulted upon and decided (e.g. notional gearing, depreciation and capitalisation rates, allowed cost of capital, etc).

8.25. These regulatory finance parameters, and other price control parameters such as totex allowances, ODIs and uncertainty mechanisms will be set as part of our next price control review. In doing so, as is the case with previous reviews, we will consider

[64] For instance, in its consultation response, NGET said "We agree that for the period considered, the RIIO-T2 arrangements were intended to ensure qualifying projects would be financeable. RIIO-T2 includes measures to support financeability, most notably the provision of 15% fast money on totex incurred through uncertainty mechanisms."

financeability, which would take into account the investment needed to deliver the ASTI programme as determined at that time. This would include the necessary modelling, assessments and other checks which we feel are necessary to satisfy ourselves that network companies are financeable on a notional basis, while also being informed by actual company positions and market data.

8.26. We will keep this position under review and will continue to have regard to financeability. If the TOs identify reasonable notional company financeability constraints ahead of the next price control review, we will consider whether these concerns need to be addressed then or whether they are better assessed 'in the round' at the relevant future price control in light of market conditions at that time. We note that this is in line with what we said in the RIIO-2 Final Determinations.[65]

Financial risk exposure from the ASTI ODI

8.27. As set out in our consultation document, we carried out detailed analysis of the financial risk exposure of the TOs from the proposed ASTI ODI using updated information from the ESO and the TOs. Our analysis focused on two potential sources of financial risk exposure:

- The proposed ASTI ODI represents an asymmetric downside adjustment to the balance of overall financial risk to the TOs, causing the expected returns to equity for the licensee to be materially lower than the baseline returns assumed at the time of setting the RIIO-2 price control allowances.

- The proposed ASTI ODI creates the risk that, under plausible circumstances, financial adjustments under the proposed framework lead to unacceptably low equity returns (in RORE terms).

8.28. Details of our assessment of the balance of risk associated with the ASTI ODI are set out in Chapter 7. We think that the changes we have made since our consultation are sufficient to mitigate any risk of asymmetric outcomes and bias towards penalties. Specifically:

- Penalties under the timely delivery ODI would only start to accrue from 12 months after the target delivery date. At the same time, TOs would earn

[65] See paragraph 5.42 RIIO-2 Final Determinations – Finance Annex (REVISED) (ofgem.gov.uk)

rewards for delivering earlier than 12 months after the target delivery date. This means that the TOs could earn a substantial reward for delivering projects by their target dates.

- The ASTI framework includes a mechanism to exempt TOs from ODI penalties for delays that are caused by factors outside their reasonable control. Because the scope of delays that are liable for penalties is limited to a subset of all delays, the probability of a penalty is lower than the probability of delayed delivery.

8.29. Separately, we considered whether the timely delivery ODI could lead to excessive downside outcomes in plausible circumstances. Any rewards or penalties under the ASTI ODI are only likely to be incurred during the next price control period. As with forecasts of credit metrics, there are limitations to our analysis of the impact of the ASTI ODI on TOs' returns:

- In the absence of data on the probability of timely delivery of individual projects, we were not able to analytically determine what might be a reasonable and plausible downside scenario to test. Given this, we considered the relatively extreme downside scenario where all projects are delivered two years (24 months) later than the target delivery dates, and no penalty exemptions are granted for any project.

- We have to make assumptions about the size of the RAV during the next price control period, which will be influenced by the overall expenditure requirements of the TOs and determinations that are yet to be made by Ofgem. We have used forecasts provided by the TOs in response to an information request, but these are subject to significant uncertainty.

- We have to make assumptions about the regulatory finance parameters that would apply (e.g. notional gearing, depreciation rates, capitalisation rates, allowed return, etc). For simplicity, we have assumed these to be the same as the RIIO-2 period.

8.30. Despite these limitations, we think the analysis has been a valuable input into our calibration of the ASTI ODI so that the ODI, under plausible circumstances, does not lead to unacceptably low equity returns (in RORE terms) but has sufficient incentive power. This is particularly important in the context where we are looking to set the daily rates for the ASTI ODI in advance at this time.

8.31. The results from our analysis are set out in the tables below.

Table 11: Analysis of the impact of ASTI ODI penalties in extreme cases (NGET)

NGET	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33
ODI penalties if all projects are delayed by 2 years after target date (£m)	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
Forecast RAV (£m)	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
Implied regulatory equity at 55% notional gearing (£m)	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
Illustrative RORE impact of the penalty	0.00%	(0.16%)	(0.50%)	(0.19%)	(0.56%)	(1.14%)

Table 12: Analysis of the impact of ASTI ODI penalties in extreme cases (SSEN-T)

SSEN-T	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33
ODI penalties if all projects are delayed by 2 years after target date (£m)	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
Forecast RAV (£m)	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
Implied regulatory equity at 55% notional gearing (£m)	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted

Illustrative RORE impact of the penalty	0.00%	0.00%	0.00%	(0.10%)	(0.98%)	(2.05%)

Table 13: Analysis of the impact of ASTI ODI penalties in extreme cases (SPT)

SPT	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33
ODI penalties if all projects are delayed by 2 years after target date (£m)	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
Forecast RAV (£m)	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
Implied regulatory equity at 55% notional gearing (£m)	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
Illustrative RORE impact of the penalty	0.00%	(0.34%)	(0.98%)	(0.06%)	(0.27%)	(0.75%)

8.32. While sensitive to assumptions as set out above, the results of our analysis suggest that the ASTI ODI is very unlikely to lead to excessively low equity returns. The aggregate ODI penalties in the extreme downside scenario would be around 3% of ASTI totex for each TO, which is roughly equivalent to a totex overspend of 6%-10% at RIIO-2 totex incentive rates. The illustrative RORE impacts of those penalties for each TO are broadly consistent with the ranges modelled by us in recent price control decisions.[66]

8.33. In any event, as set out earlier in this section, we will keep financeability under review and will undertake a full assessment of financeability and financial risk in the round at the next price control review.

[66] See, for example, Figure 3 of the Finance Annex to our Final Determinations for the RIIO-ED2 price control.

3091

9. Conclusion and next steps

Section summary

We summarise our Decision and set out how we will take our work forward.

Decision summary

9.1. Our decision to introduce a new ASTI framework represents a step-change in the way that large onshore transmission projects required to deliver the Government's 2030 ambitions are assessed and funded.

9.2. We are confident that the ASTI framework can provide the regulatory platform required for the TOs to accelerate delivery of ASTI projects in accordance with their delivery plans and provide the best opportunity of delivering the portfolio of projects by 2030.

9.3. We are confident that our decision to streamline the regulatory process can ultimately reduce the time taken to deliver large onshore transmission projects. However, in order to further accelerate and deliver the ASTI projects by 2030 the TOs will need to implement an updated approach to their delivery models, and the current planning regime will need to be modified to reduce the length of time taken for planning permission and necessary consents to be obtained.

9.4. We believe our incentive and consumer protection framework incentivises the correct behaviours to drive accelerated delivery, while at the same time protecting consumers should projects not get delivered on time and the benefits of acceleration not being realised.

9.5. Delivering the full portfolio of ASTI projects by 2030 will require enhanced collaboration and engagement between Ofgem, the TOs and BEIS over the coming years. We look forward to working together to deliver a programme of investment that will contribute towards GB's NZ ambitions and decarbonisation of the energy sector, ensure security of supply, and improve the overall resilience of the electricity transmission network.

Next steps

9.6. We now need to implement the policy decisions set out in this document into the Electricity Transmission licence. We are engaging with the TOs and will establish a Licence

Drafting Working Group to progress development of the necessary licence condition(s). Our current intention is for a statutory consultation in Spring 2023 with a view to formally implementing the ASTI framework into the licence in Summer 2023.

9.7. We recognise that this means there will not be a mechanism in the licence to provide PCF or ECF for some time, whilst the TOs' delivery plans make provision for expenditure on ASTI projects from Q4 2022. We intend that the policy decisions contained in this document provide sufficient assurance for the TOs to begin work ahead of the licence conditions being in place.

9.8. We expect to receive updated project delivery plans from all TOs in December 2022, setting out their updated view on project delivery timelines and costs. We expect the TOs to flag to Ofgem in their delivery plans which projects they will require PCF and ECF for, and we will make allowance adjustments in due course in accordance with the policy set out in Chapter 5 above.

Appendix 1: ASTI projects

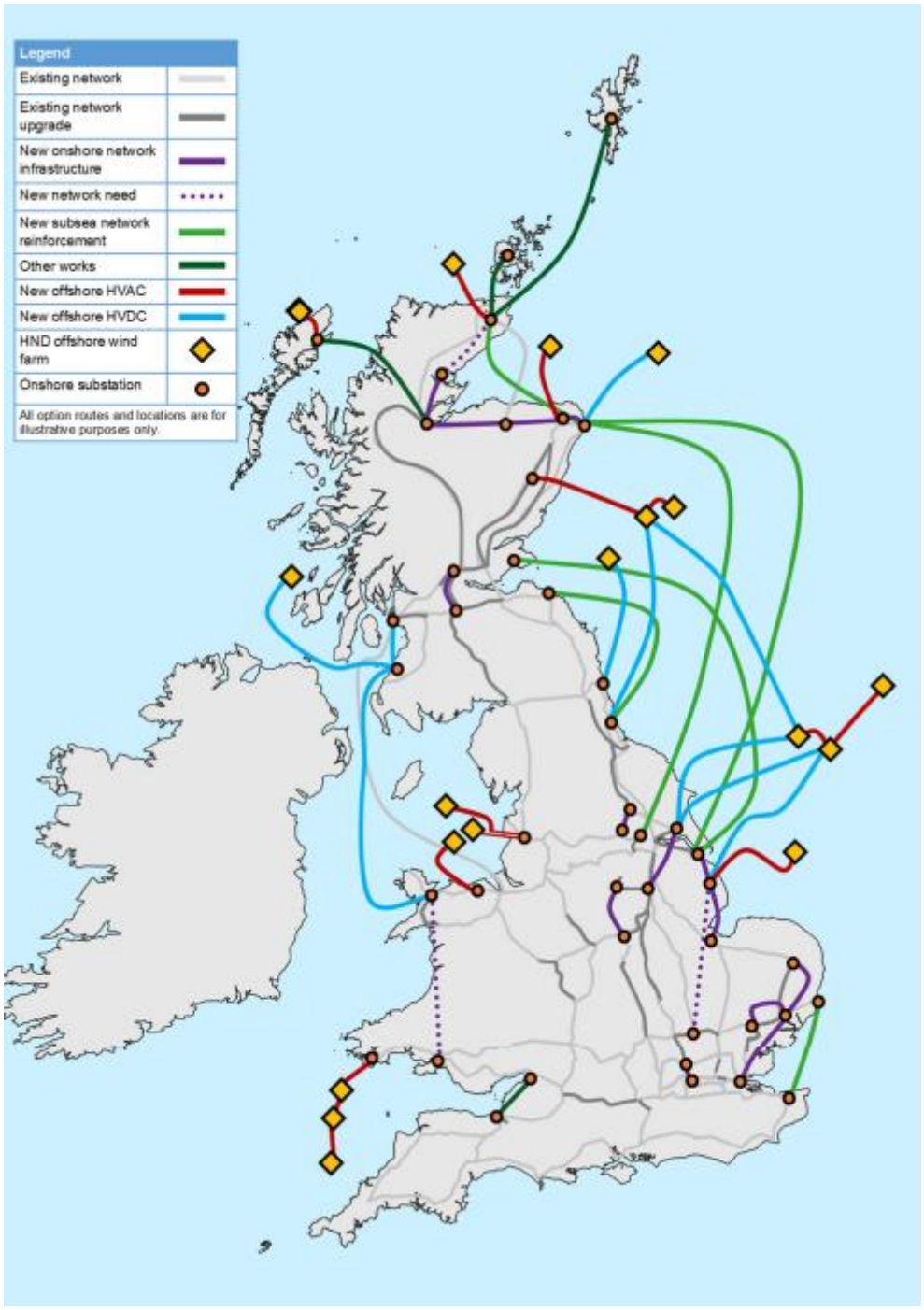
Summary of all projects considered under ASTI 1

Project	Description	TO	Optimal Date	Within ASTI scope	Comp exempt?
AENC	New 400kv double circuit north E.Anglia	NGET	2030	Yes	Yes
ATNC	New 400kv double circuit south E.Anglia	NGET	2030	Yes	Yes
OPN2	New 400kv double circuit Norton-Osbaldwick	NGET	2027	Yes	Yes
GWNC	New 400kv double circuit Humber-Lincolnshire	NGET	2030	Yes	Yes
CGNC	New 400kv double circuit Creyke Beck-Humber	NGET	2030	Yes	Yes
EDEU	400kv upgrade Brinsworth-Chesterfiled-High Marnam	NGET	2028	Yes	Yes
EDN2	New 400kv double circuit Chesterfield-Ratcliffe-on-Saur	NGET	2030	Yes	Yes
BTNO	New 400kv double circuit Bramford-Twinstead	NGET	2028	Yes	Yes
PTC1	Cable replacement Pentir-Trawsfynydd	NGET	2028	Yes	Yes
PTNO	North Wales reinforcement	NGET	2029	Yes	Yes
TKRE	Grain-Tilbury-Kingsnorth upgrade	NGET	2028	Yes	Yes
HWUP	Uprate Hackney, Tottenham & Waltham Cross	NGET	2027	Yes	Yes
SCD1	Suffolk-Kent offshore HVDC link	NGET	2030	Yes	Yes
BLN4	Beauly-Loch Buidhe 400kv reinforcement	SSE	2030	Yes	Yes
SLU4	Loch Buidhe-Spittal 400kv reinforcement	SSE	2030	Yes	Yes
BBNC	New 400kv double circuit Bealy-Blackhillock	SSE	2030	Yes	Yes
BPNC	New 400kv double circuit Blackhillock-Peterhead	SSE	2030	Yes	Yes
BDUP	Beauly-Denny 400kv uprating	SSE	2030	Yes	Yes
TKUP	East Coast onshore 400kv Phase 2 reinforcement	SSE/SPT	2030	Yes	Yes
PSDC	Spittal-Peterhead HVDC reinforcement	SSE	2030	Yes	Yes
E4D3	Peterhead-Drax HVDC	SSE/NGET	2029	Yes	Yes
E4L5	Peterhead-south Humber HVDC	SSE/NGET	2030	Yes	Yes
W.Isles	Arnish-Beauly HVDC	SSE	2030	Yes	Yes
DWNO	Denny-Wishaw 400kv reinforcement	SPT	2028	Yes	Yes
E2DC	Torness-Hawthorn Pit HVDC	SPT/NGET	2027	Yes	Yes
TGDC	East Scotland-south Humber HVDC	SPT/NGET	2030	Yes	Yes
LRN4	New South Lincolnshire to Hertfordshire double circuit	NGET	2030	PCF Only	No
PSNC	New North Wales to South Wales double circuit	NGET	2030	PCF Only	No
Aquila	Direct Current Switching Station (DCSS) at Peterhead	SSE	2030*	No	No
Additional projects following Asset classification process					
AC1	R4_2 to Lincolnshire	TBC	2030*	PCF Only	No
AC2	R4_1 to R4_2	TBC	2030*	PCF Only	No
AC3	Fetteresso to SW_E1a	TBC	2030*	PCF Only	No
AC4	SW_E1a to R4_1	TBC	2030*	PCF Only	No
AC5	Hunterston to T-point	TBC	2030*	PCF Only	No
AC6	Pentir to T-point	TBC	2030*	PCF Only	No

*Aquila does not meet the criteria to be funded through ASTI, it will be assessed under the Net Zero reopener. AC1-AC6 projects are newly identified projects from the HND and very is little known about the delivery expectations for these projects. We therefore do not consider there is sufficient evidence to support the inclusion of these projects in the ASTI framework or exempt from competition at this point in time.

Orange cells in the column "Optimal Date" represent the optimal dates that are earlier than the EISDs originally provided by the TOs.

The Holistic Network Design



*Source: NGESO's Holistic Network Design (Page 32)

3095

Appendix 2 – CBA Scenarios and Assumptions

Our CBA was based upon several assumptions of benefits and disbenefits of applying the ASTI measures. We looked at 3 Scenarios which tested the ranges of these assumptions, as well as further sensitivities within these. The assumptions included the following:

I. Competition Savings of 10-15% of project value (minus 5% assumed spent pre-tender).

II. Project abandonment costs – this is the assumption that 10% of projects are abandoned due to failure to obtain planning consents. We consider the ECF to be an additional risk here vs the counterfactual. Our assumption for ECF ranges from 15-20% of project value.

III. Project Assessment Loss – this is a reduction in the amount of savings achieved via our Cost Assessment Process. We have used a range of 2.5-3% of project value.

IV. Constraint savings – This is the ESO's forecast for constraint impact, with the Government's Carbon Values attributed to projects with EISDs beyond 2030. We made assumptions for all of our scenarios that 50% of projects with EISDs 2030 or earlier avoid 1 year of delay due to the ASTI measures, but the tables below include sensitivities around this.

V. Number of projects competed under the counterfactual: We cannot be certain how many projects would feasibly be competed under the counterfactual. We have identified 8 we think are most likely, plus an additional 3 that may also possibly be competed. We have included a range of these in our three scenarios below.

Central Scenario

- Uses "Central Series" for the year 2030 from the Government's Carbon Values to calculate CO_2 impact of accelerating post-2030 projects.

- Uses mid-points from the ranges outlined in I-V above0.

- Assumes 8 Projects competed under the counterfactual, plus half of the capex of the additional 3 projects mentioned in Paragraph 0V.

Sensitivities for "Central Scenario"

Net outcome for all 26 projects in scope:
9.5 Projects assumed competed under counterfactual.
Does not include a constraint benefit for Western Isles Link.

	Delivery assumption											
	50% 1 year late			50% 9 months late			50% 6 months late			50% 3 months late		
Competition %	10%	12.5	15%	10%	12.5	15%	10%	12.5	15%	10%	12.5	15%
Competition loss	-573	-716	-859	-573	-716	-859	-573	-716	-859	-573	-716	-859
Constraint Saving	3514	3514	3514	3262	3262	3262	3011	3011	3011	2759	2759	2759
Project Assessment Loss	-377	-377	-377	-377	-377	-377	-377	-377	-377	-377	-377	-377
ECF loss	-346	-346	-346	-346	-346	-346	-346	-346	-346	-346	-346	-346
Net Outcome:	**2218**	**2074**	**1931**	**1966**	**1823**	**1680**	**1715**	**1571**	**1428**	**1463**	**1320**	**1177**
Project Assessment Loss	-2.75%			Number of projects abandoned:						10.0%		
Competition	10-15%			Cost spent pre-planning:						17.5%		

2

Worst Scenario

- Uses "Low Series" for the year 2030 from the Government's Carbon Values to calculate CO_2 impact of accelerating post-2030 projects.

- Uses lowest values from the ranges outlined in I-V above 0.

- Assumes 11 Projects competed under the counterfactual, (includes the additional 3 projects mentioned in Paragraph 0V)

Sensitivities for "Worst Scenario"

Net outcome for all 26 projects in scope:
11 Projects assumed competed under counterfactual.
Does not include a constraint benefit for Western Isles Link.

	Delivery assumption											
	50% 1 year late			50% 9 months late			50% 6 months late			50% 3 months late		
Competition %	10%	12.5	15%	10%	12.5	15%	10%	12.5	15%	10%	12.5	15%
Competition loss	-748	-935	-1122	-748	-935	-1122	-748	-935	-1122	-748	-935	-1122
Constraint Saving	2865	2865	2865	2614	2614	2614	2362	2362	2362	2111	2111	2111
Project Assessment Loss	-462	-462	-462	-462	-462	-462	-462	-462	-462	-462	-462	-462
ECF loss	-395	-395	-395	-395	-395	-395	-395	-395	-395	-395	-395	-395
Net Outcome:	**1260**	**1073**	**886**	**1009**	**822**	**635**	**757**	**570**	**383**	**506**	**319**	**132**
Project Assessment Loss	-3.0%			Number of projects abandoned:						10.0%		
Competition	10-15%			Cost spent pre-planning:						20.0%		

Best Scenario

- Uses "High Series" for the year 2030 from the Government's Carbon Values to calculate CO_2 impact of accelerating post-2030 projects.

- Uses highest values from the ranges outlined in I-V above0.0

- Assumes 8 Projects competed under the counterfactual, (does **not** include the additional 3 projects mentioned in Paragraph 0V)

Sensitivities for "Best" Scenario

Net outcome for all 26 projects in scope:
8 Projects assumed competed under counterfactual.
Does not include a constraint benefit for Western Isles Link.

	Delivery assumption											
	50% 1 year late			50% 9 months late			50% 6 months late			50% 3 months late		
Competition %	10%	12.5	15%	10%	12.5	15%	10%	12.5	15%	10%	12.5	15%
Competition loss	-414	-518	-621	-414	-518	-621	-414	-518	-621	-414	-518	-621
Constraint Saving	4162	4162	4162	3910	3910	3910	3659	3659	3659	3407	3407	3407
Project Assessment Loss	-385	-385	-385	-385	-385	-385	-385	-385	-385	-385	-385	-385
ECF loss	-296	-296	-296	-296	-296	-296	-296	-296	-296	-296	-296	-296
Net Outcome:	**3066**	**2963**	**2859**	**2815**	**2711**	**2608**	**2563**	**2460**	**2356**	**2312**	**2208**	**2105**
Project Assessment Loss	-2.5%			Number of projects abandoned:						10.0%		
Competition	10-15%			Cost spent pre-planning:						15.0%		

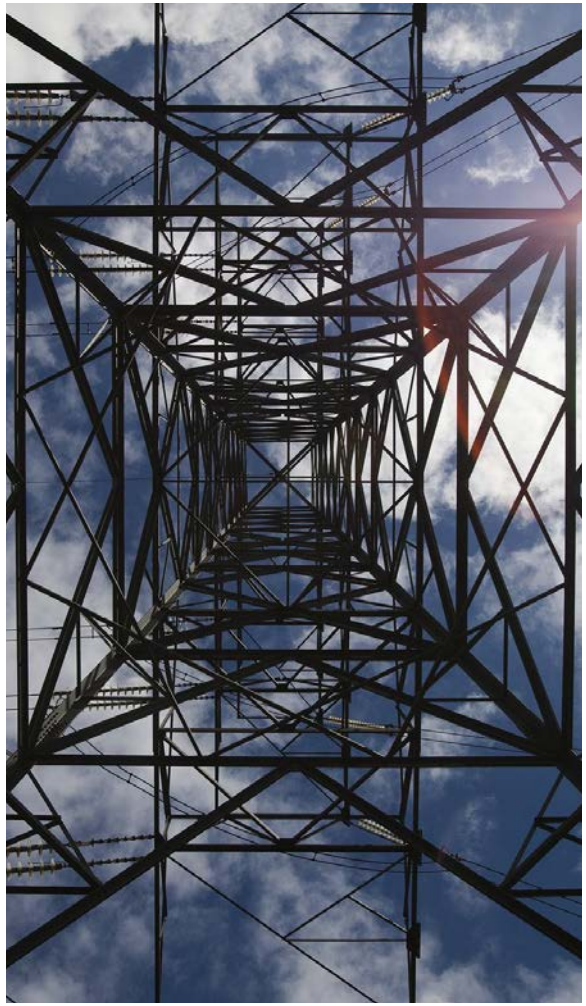
Technical Guidance Note 287

Third-party guidance for working near National Grid Electricity Transmission equipment

Click here to enter

nationalgrid

3099



Purpose and scope

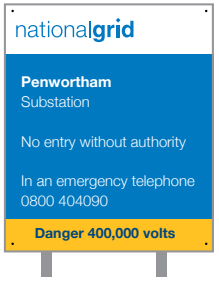
The purpose of this document is to give guidance and information to third parties who are proposing, scheduling or designing developments close to National Grid Electricity Transmission assets.

The scope of the report covers information on basic safety and the location of our assets – and also highlights key issues around particular types of development and risk areas.

In the case of electrical assets, National Grid does not authorise or agree safe systems of work with developers and contractors. However, we will advise on issues such as electrical safety clearances and the location of towers and cables. We also work with developers to minimise the impact of any National Grid assets that are nearby.

How to identify specific National Grid sites

Substations
The name of the substation and the emergency contact number will be on the site sign.



Overhead lines
The reference number of the tower and the emergency contact number will be on this type of sign.

Contact National Grid

Plant protection

For routine enquiries regarding planned, scheduled or emergency works, contact the Plant Protection team online, by email, post or phone.

www.beforeyoudig.nationalgrid.com

Email: plantprotection@nationalgrid.com

Phone: 0800 688 588

Write to:
National Grid Plant Protection
Brick Kiln Street
Hinckley
Leicestershire
LE10 0NA

Emergencies

In the event of occurrences such as a cable strike, coming into contact with an overhead line conductor or identifying any hazards or problems with National Grid's equipment, phone our emergency number 0800 404 090 (option 1).

If you have apparatus within 30m of a National Grid asset, please ensure that the emergency number is included in your site's emergency procedures.

Consider safety

Consider the hazards identified in this document when working near electrical equipment

Part 1
Electricity transmission infrastructure

National Grid owns and maintains the high-voltage electricity transmission network in England and Wales (Scotland has its own networks). It's responsible for balancing supply with demand on a minute-by-minute basis across the network.

Overhead lines
Overhead lines consist of two main parts – pylons (also called towers) and conductors (or wires). Pylons are typically steel lattice structures mounted on concrete foundations. A pylon's design can vary due to factors such as voltage, conductor type and the strength of structure required.

Conductors, which are the 'live' part of the overhead line, hang from pylons on insulators. Conductors come in several different designs depending on the amount of power that is transmitted on the circuit.

In most cases, National Grid's overhead lines operate at 275kV or 400kV.

Underground cables
Underground cables are a growing feature of National Grid's network. They consist of a conducting core surrounded by layers of insulation and armour. Cables can be laid in the road, across open land or in tunnels. They operate at a range of voltages, up to 400kV.

Substations
Substations are found at points on the network where circuits come together or where a rise or fall in voltage is required. Transmission substations tend to be large facilities containing equipment such as power transformers, circuit breakers, reactors and capacitors. Diesel generators and compressed air systems are also found there.

Part 2
Statutory requirements for working near high-voltage electricity

The legal framework that regulates electrical safety in the UK is *The Electricity Safety, Quality and Continuity Regulations (ESQCR) 2002*. This also details the minimum electrical safety clearances, which are used as a basis for the Energy Networks Association (ENA) TS 43-8. These standards have been agreed by CENELEC (European Committee for Electrotechnical Standardisation) and also form part of the *British Standard BS EN 50341-1:2012 Overhead Electrical Lines exceeding AC 1kV*. All electricity companies are bound by these rules, standards and technical specifications. They are required to uphold them by their operator's licence.

Electrical safety clearances
It is essential that a safe distance is kept between the exposed conductors and people and objects when working near National Grid's electrical assets. A person does not have to touch an exposed conductor to get a life-threatening electric shock. At the voltages National Grid operates at, it is possible for electricity to jump up to several metres from an exposed conductor and kill or cause serious injury to anyone who is nearby. For this reason, there are several legal requirements and safety standards that must be met.

Any breach of legal safety clearances will be enforced in the courts. This can – and has – resulted in the removal of an infringement, which is normally at the cost of the developer or whoever caused it to be there. Breaching safety clearances, even temporarily, risks a serious incident that could cause serious injury or death.

National Grid will, on request, advise planning authorities, developers or third parties on any safety clearances and associated issues. We can supply detailed drawings of all our overhead line assets marked up with relevant safe areas.

Part 3

What National Grid will do for you and your development

Provision of information

National Grid should be notified well in advance of any works or developments taking place near our electrical assets. We can then provide the following services:

Drawings

National Grid will provide relevant drawings of overhead lines or underground cables to make sure the presence and location of our services are known. Once a third party or developer has contacted us, we will supply the drawings for free.

Risk or impact identification

National Grid can help identify any hazards or risks that the presence of our assets might bring to any works or developments. This includes both the risk to safety from high-voltage electricity and longer-term issues, such as induced currents, noise and maintenance access that may affect the outcome of the development. National Grid will not authorise specific working procedures, but we can provide advice on best practice.

400kV

The maximum nominal voltage of the underground cables in National Grid's network

Risks or hazards to be aware of

This section includes a brief description of some of the hazards and issues that a third party or developer might face when working or developing close to our electrical infrastructure.

Land and access

National Grid has land rights in place with landowners and occupiers, which cover our existing overhead lines and underground cable network. These agreements, together with legislation set out under the *Electricity Act 1989*, allow us to access our assets to maintain, repair and renew them. The agreements also lay down restrictions and covenants to protect the integrity of our assets and meet safety regulations. Anyone proposing a development close to our assets should carefully examine these agreements.

Our agreements often affect land both inside and outside the immediate vicinity of an asset. Rights will include the provision of access, along with restrictions that ban the development of land through building, changing levels, planting and other operations. Anyone looking to develop close to our assets must consult with National Grid first.

For further information, contact Plant Protection:

Email: plantprotection@nationalgrid.com
Phone: 0800 688 588

Electrical clearance from overhead lines

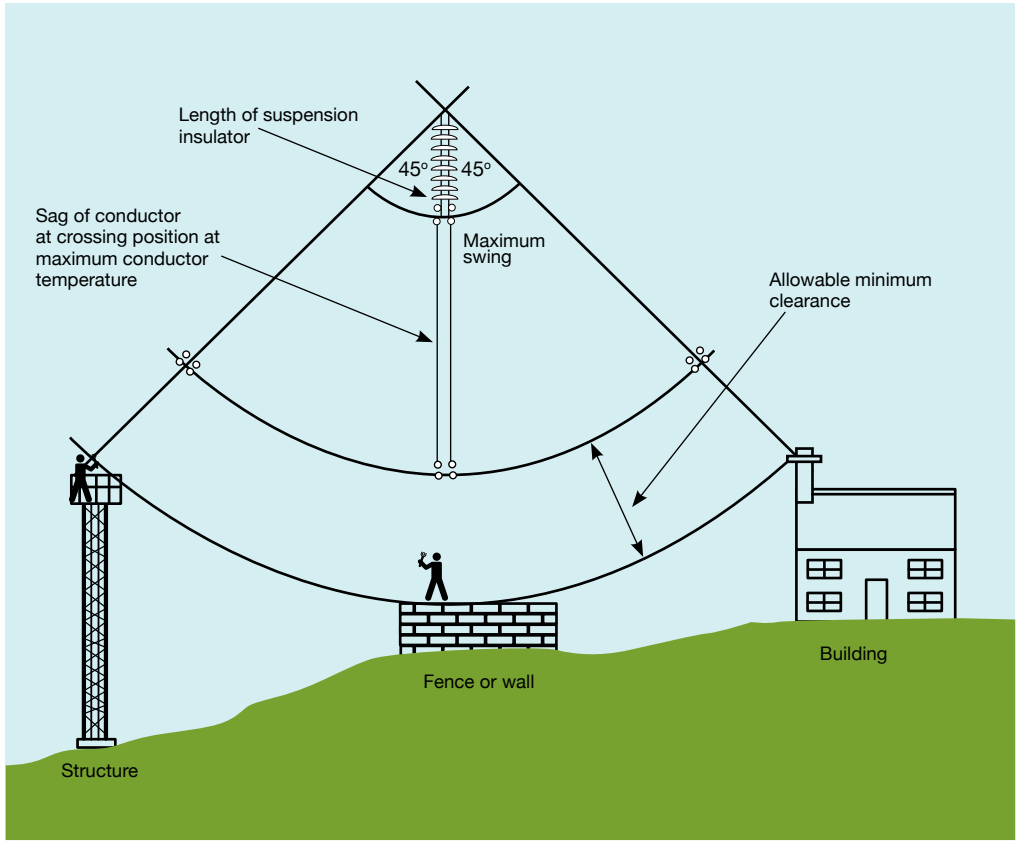
The clearance distances referred to in this section are specific to 400kV overhead lines. National Grid can advise on the distances required around different voltages i.e. 132kV and 275kV.

As we explained earlier, *Electrical Networks Association TS 43-8* details the legal clearances to our overhead lines.The minimum clearance between the conductors of an overhead line and the ground is 7.3m at maximum sag. The sag is the vertical distance between the wire's highest and lowest point. Certain conditions, such as power flow, wind speed and air temperature can cause conductors to move and allowances should be made for this.

The required clearance from the point where a person can stand to the conductors is 5.3m. To be clear, this means there should be at least 5.3m from where someone could stand on any structure (i.e. mobile and construction equipment) to the conductors. Available clearances will be assessed by National Grid on an individual basis.

National Grid expects third parties to implement a safe system of work whenever they are near overhead lines. We recommend that guidance such as *HSE Guidance Note GS6 (Avoiding Danger from Overhead Power Lines)* is followed, which provides advice on how to avoid danger from all overhead lines, at all voltages. If you are carrying out work near overhead lines you must contact National Grid, who will provide the relevant profile drawings.

Diagram not to scale



There should be at least 5.3m between the conductors and any structure someone could stand on

7.3m

The required minimum clearance between the conductors of an overhead line, at maximum sag, and the ground

Section continues on next page »

The undergrounding of electricity cables at Ross-on-Wye

« Section continued from previous page

Underground cables

Underground cables operating at up to 400kV are a significant part of the National Grid Electricity Transmission network. When your works will involve any ground disturbance it is expected that a safe system of work is put in place and that you follow guidance such as *HSG 47 (Avoiding Danger from Underground Services)*.

You must contact National Grid to find out if there are any underground cables near your proposed works. If there are, we will provide cable profiles and location drawings and, if required, on-site supervision of the works. Cables can be laid under roads or across industrial or agricultural land. They can even be layed in canal towpaths and other areas that you would not expect.

Cables crossing any National Grid high-voltage (HV) cables directly buried in the ground are required to maintain a minimum seperation that will be determined by National Grid on a case-by-case basis. National Grid will need to do a rating study on the existing cable to work out if there are any adverse effects on either cable rating. We will only allow a cable to cross such an area once we know the results of the re-rating. As a result, the clearance distance may need to be increased or alternative methods of crossing found.

For other cables and services crossing the path of our HV cables, National Grid will need confirmation that published standards and clearances are met.

Impressed voltage

Any conducting materials installed near high-voltage equipment could be raised to an elevated voltage compared to the local earth, even when there is no direct contact with the high-voltage equipment. These impressed voltages are caused by inductive or capacitive coupling between the high-voltage equipment and nearby conducting materials and can occur at distances of several metres away from the equipment. Impressed voltages may damage your equipment and could potentially injure people and animals, depending on their severity. Third parties should take impressed voltages into account during the early stages and initial design of any development, ensuring that all structures and equipment are adequately earthed at all times.

Section continues on next page »

« Section continued from previous page

Earth potential rise

Under certain system fault conditions – and during lightning storms – a rise in the earth potential from the base of an overhead line tower or substation is possible. This is a rare phenomenon that occurs when large amounts of electricity enter the earth. This can pose a serious hazard to people or equipment that are close by.

We advise that developments and works are not carried out close to our tower bases, particularly during lightning storms.

Noise

Noise is a by-product of National Grid's operations and is carefully assessed during the planning and construction of any of our equipment. Developers should consider the noise emitted from National Grid's sites or overhead lines when planning any developments, particularly housing. Low-frequency hum from substations can, in some circumstances, be heard up to 1km or more from the site, so it is essential that developers find adequate solutions for this in their design. Further information about likely noise levels can be provided by National Grid.

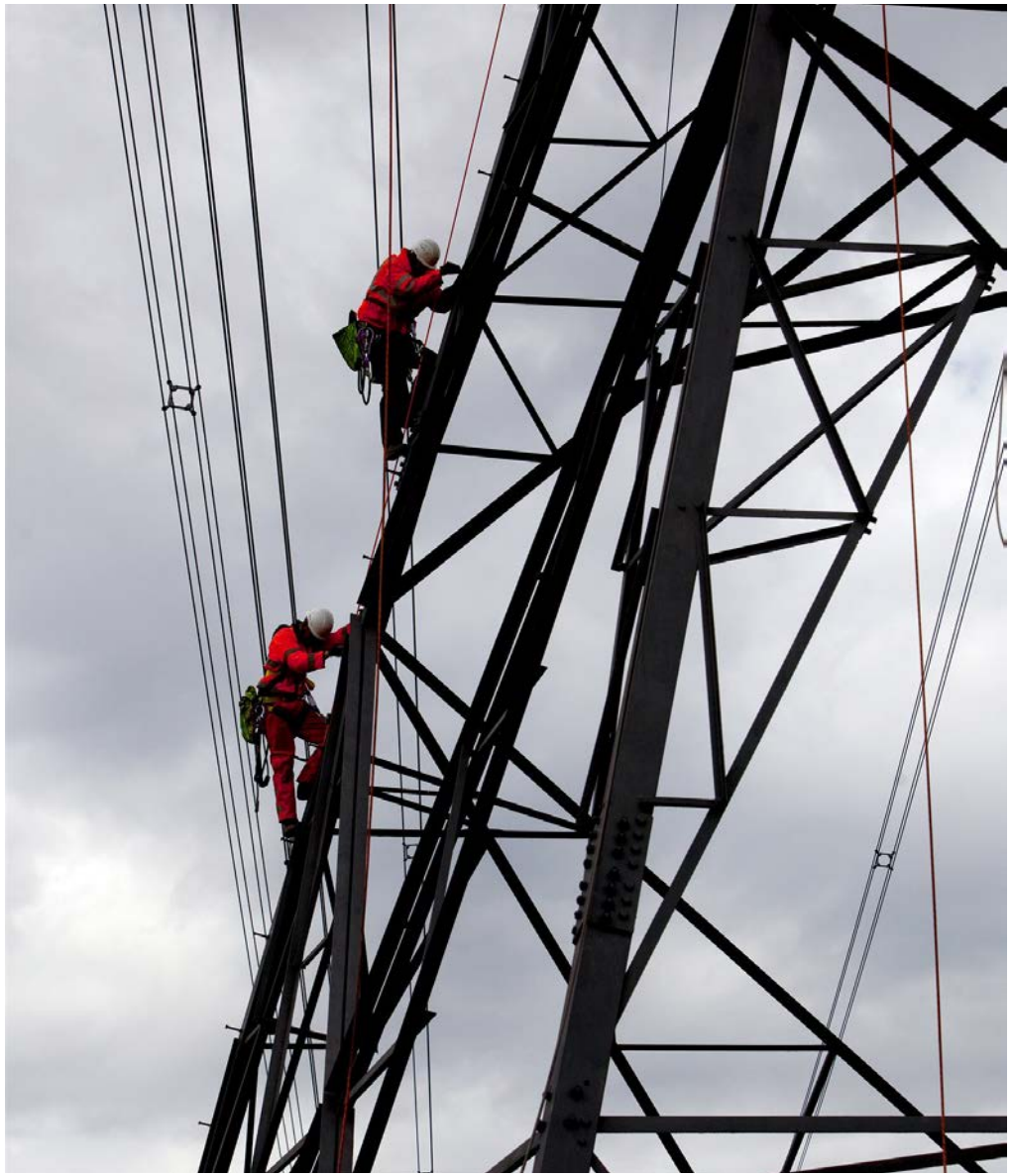
Maintenance access

National Grid needs to have safe access for vehicles around its assets and work that restricts this will not be allowed. In terms of our overhead lines, we wouldn't want to see any excavations made, or permanent structures built, that might affect the foundations of our towers. The size of the foundations around a tower base depends on the type of tower that is built there. If you wish to carry out works within 30m of the tower base, contact National Grid for more information. Our business has to maintain access routes to tower bases with land owners. For that reason, a route wide enough for an HGV must be permanently available. We may need to access our sites, towers, conductors and underground cables at short notice.

30m

If you wish to carry out work within this distance of the tower base, you must contact National Grid for more information

Section continues on next page »



« Section continued from previous page

Fires and firefighting

National Grid does not recommend that any type of flammable material is stored under overhead lines. Developers should be aware that in certain cases the local fire authority will not use water hoses to put out a fire if there are live, high-voltage conductors within 30m of the seat of the fire *(as outlined in ENA TS 43-8)*.

In these situations, National Grid would have to be notified and reconfigure the system – to allow staff to switch out the overhead line – before any firefighting could take place. This could take several hours.

We recommend that any site which has a specific hazard relating to fire or flammable material should include National Grid's emergency contact details (found at the beginning and end of this document) in its fire plan information, so any incidents can be reported.

Developers should also make sure their insurance cover takes into account the challenge of putting out fires near our overhead lines.

Excavations, piling or tunnelling

You must inform National Grid of any works that have the potential to disturb the foundations of our substations or overhead line towers. This will have to be assessed by National Grid engineers before any work begins.

BS ISO 4866:2010 states that a minimum distance of 200m should be maintained when carrying out quarry blasting near our assets. However, this can be reduced with specific site surveys and changes to the maximum instantaneous charge (the amount of explosive detonated at a particular time).

All activities should observe guidance layed out in *BS 5228-2:2009*.

Microshocks

High-voltage overhead power lines produce an electric field. Any person or object inside this field that isn't earthed picks up an electrical charge. When two conducting objects – one that is grounded and one that isn't – touch, the charge can equalise and cause a small shock, known as a microshock. While they are not harmful, they can be disturbing for the person or animal that suffers the shock.

For these reasons, metal-framed and metal-clad buildings which are close to existing overhead lines should be earthed to minimise the risk of microshocks. Anything that isn't earthed, is conductive and sits close to the lines is likely to pick up a charge. Items such as deer fences, metal palisade fencing, chain-link fences and metal gates underneath overhead lines all need to be earthed.

For further information on microshocks please visit **www.emfs.info.**

200m

The minimum distance that should be maintained from National Grid assets when quarry blasting

Specific development guidance

Wind farms

National Grid's policy towards wind farm development is closely connected to the *Electricity Networks Association Engineering Recommendation L44 Separation between Wind Turbines and Overhead Lines, Principles of Good Practice.* The advice is based on national guidelines and global research. It may be adjusted to suit specific local applications.

There are two main criteria in the document:

(i) The turbine shall be far enough away to avoid the possibility of toppling onto the overhead line

(ii) The turbine shall be far enough away to avoid damage to the overhead line from downward wake effects, also known as turbulence

The toppling distance is the minimum horizontal distance between the worst-case pivot point of the wind turbine and the conductors hanging in still air. It is the greater of:

- the tip height of the turbine plus 10%
- or, the tip height of the turbine plus the electrical safety distance that applies to the voltage of the overhead line.

To minimise the downward wake effect on an overhead line, the wind turbine should be three times the rotor distance away from the centre of the overhead line.

Wake effects can prematurely age conductors and fittings, significantly reducing the life of the asset. For that reason, careful consideration should be taken if a wind turbine needs to be sited within the above limits. Agreement from National Grid will be required.

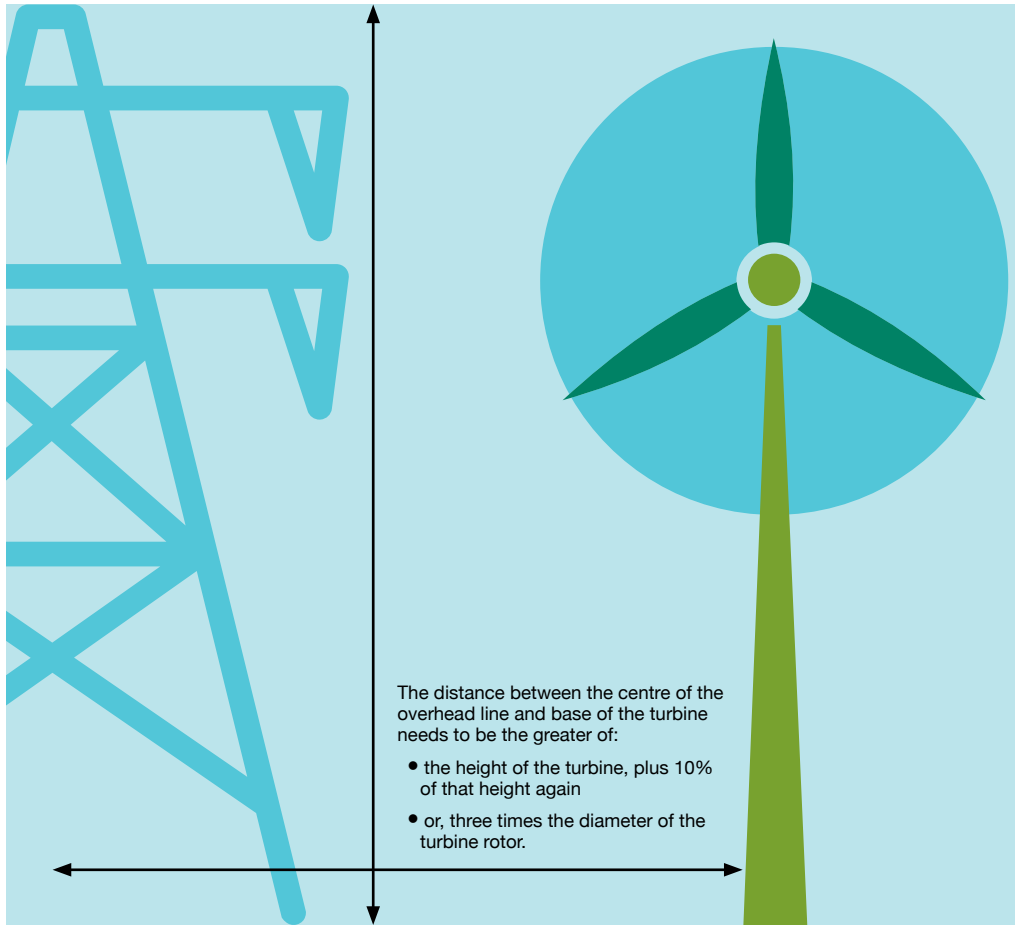
Commercial and housing developments

National Grid has developed a document called *A Sense of Place*, which gives advice to anyone involved in planning or designing large-scale developments that are crossed by, or close to, overhead lines.

The document focuses on existing 275kV and 400kV overhead lines on steel lattice towers, but can equally apply to 132kV and below. The document explains how to design large-scale developments close to high-voltage lines, while respecting clearances and the development's visual and environmental impact.

Section continues on next page »

Diagram not to scale



Turbines should be far enough away to avoid the possibility of toppling onto the overhead line

« Section continued from previous page

The advice is intended for developers, designers, landowners, local authorities and communities, but is not limited to those organisations.

Overall, developers should be aware of all the hazards and issues relating to the electrical equipment that we have discussed when designing new housing.

As we explored earlier, National Grid's assets have the potential to create noise. This can be low frequency and tonal, which makes it quite noticeable. It is the responsibility of developers to take this into account during the design stage and find an appropriate solution.

Solar farms

Development of solar farms is a relatively new phenomenon. While there is limited research and recommendations available, there are several key factors to consider when designing them.

Developers may be looking to build on arable land close to National Grid's assets. In keeping with the safety clearance limits that we outlined earlier for solar panels directly underneath overhead line conductors, the highest point on the solar panels must be no more than 5.3m from the lowest conductors.

This means that the maximum height of any structure will need to be determined to make sure safety clearance limits aren't breached. This could be as low as 2m. National Grid will supply profile drawings to aid the planning of solar farms and determine the maximum height of panels and equipment.

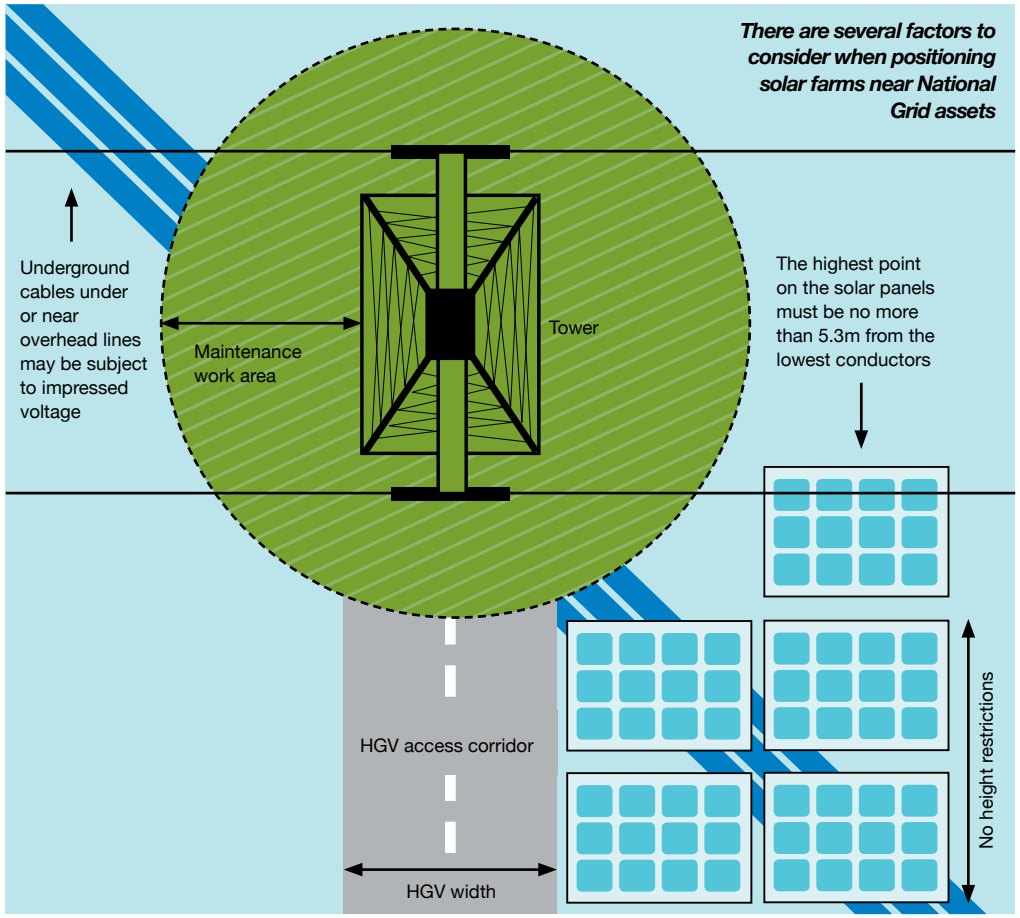
Solar panels that are directly underneath power lines risk being damaged on the rare occasion that a conductor or fitting falls to the ground. A more likely risk is ice falling from conductors or towers in winter and damaging solar panels.

There is also a risk of damage during adverse weather conditions, such as lightning storms, and system faults. As all our towers are earthed, a weather event such as lightning can cause a rise in the earth potential around the base of a tower. Solar panel support structures and supply cables should be adequately earthed and bonded together to minimise the effects of this temporary rise in earth potential.

Any metallic fencing that is located under an overhead line will pick up an electrical charge. For this reason, it will need to be adequately earthed to minimise microshocks to the public.

For normal, routine maintenance and in an emergency National Grid requires unrestricted access to its assets. So if a tower is enclosed in a solar farm compound, we will need full access for our vehicles, including access through any compound gates. During maintenance – and especially re-conductoring – National Grid would need enough space near our towers for winches and cable drums. If enough space is not available, we would require solar panels to be temporarily removed.

Diagram not to scale



Asset protection agreements

In some cases, where there is a risk that development will impact on National Grid's assets, we will insist on an asset protection agreement being put in place. The cost of this will be the responsibility of the developer or third party.

Contact details

Emergency situations

If you spot a potential hazard on or near an overhead electricity line, do not approach it, even at ground level. Keep as far away as possible and follow the six steps below:

- Warn anyone close by to evacuate the area
- Call our 24-hour electricity emergency number: **0800 404 090 (Option 1)**[1]
- Give your name and contact phone number
- Explain the nature of the issue or hazard
- Give as much information as possible so we can identify the location – i.e. the name of the town or village, numbers of nearby roads, postcode and (ONLY if it can be observed without putting you or others in danger) the tower number of an adjacent pylon
- Await further contact from a National Grid engineer

[1] It is critically important that you don't use this phone number for any other purpose. If you need to contact National Grid for another reason please use our Contact Centre at **www2.nationalgrid.com/contact-us** to find the appropriate information or call 01926 653 000.

Routine enquiries

Email:
plantprotection@nationalgrid.com
(you will be sent an automated response to confirm receipt)

Call Plant Protection for free on:
0800 688 588

Opening hours:
Monday to Friday 08:00-16:30

Write to:
National Grid Plant Protection,
Brick Kiln Street,
Hinckley,
Leicestershire
LE10 0NA

Construction best practice for overhead line installation

Version 1

nationalgrid

3111

This document sets out National Grid's approach to good practice when we carry out work to install, maintain and operate equipment on, over, in orunder land and what you as landowner/occupier can expect.

The document also provides information on our duties as the owner of the national electricity transmission network.

We will adopt the best practice as set out in this document wherever it is possible and reasonably practicable to do so. If we cannot do so, we will always explain why. We will also always comply with all relevant legislation. This document does not affect any other rights or powers that you or we may have.

Contents

3112

Section 1
Before works commence

Route selection

The route a project takes will usually be selected following careful consideration of:

- the directness of possible routes
- how disruptive works may be to the local traffic, businesses and individuals
- ensuring that engineering considerations are met
- complete costs of the works which includes both the facilitation of works and reinstatement
- the locations of any existing underground and overhead equipment
- avoiding sites of archaeological and environmentally important sites
- environmental factors.

Land referencing

National Grid endeavours to identify all individuals and organisations that have an interest in land that may be affected by their proposed works. This is so we can keep you informed about the scheme and to ensure that the details of relevant property interests are included within a Book of Reference or Schedule of Interests. This document is submitted as part of our application and typically includes landowners, tenants, businesses and any individual who may have rights over land and/or property, as well as other interests such as mortgage companies.

In order for us to consult the people affected by our projects, we will send you a pre-populated Land Interest Questionnaire (LIQ) which sets out the information held by HM Land Registry. We will ask you to confirm the details that we hold are correct or ask you to make us aware of any additional interests that you believe are affected by the project. This information will also ensure that we keep you informed of progress of the project and will ensure that you have our contact information if you want to get in touch or have any questions about our proposals.

Consultation with stakeholders

With any of our proposals, we will always look to consult with all land interests to discuss works, obtain feedback and build positive relationships with affected parties. We understand that these schemes affect you and want to make every effort to ensure you are kept informed about what we are looking to do. During consultation, we would be looking to obtain further information on:

- landownership and occupancy (should this differ)
- any development proposals for the land which would include any plans for permanent structures or existing planning consents
- any known services, equipment of structures below ground
- whether the land has any special designations (e.g. sites of special scientific interest) or requirements such as public rights of way
- potential cropped and/or stocking of land
- land use and possible impact of proposed works.

Instructing an agent and surveyor's fees

National Grid encourage you to appoint an agent/surveyor to act on your behalf where we are seeking rights to carry out works on your property. An agent/surveyor will advise you on the process, your rights and will handle any compensation claims on your behalf.

National Grid will reimburse you for professional fees reasonably incurred in respect of all claims and advice on legal agreements in connection with associated land rights. More information on this can be found within our Payment of Surveyors Fees document.

Non-intrusive surveys

During the planning stages of our project, and in advance of any final routing decision, we undertake surveys over land so that we can understand any potential constraints to be considered in the project routing decision.

Walkover surveys, including ecological and archaeological surveys, will be undertaken in early project development. We will endeavour to agree access on a voluntary basis wherever possible, and landowners/occupiers will always be afforded as much notice as reasonably practicable before access is taken. An advance payment of compensation will be made to you to compensate any losses incurred as a result of surveys. Any further losses will be dealt with on a proven loss basis.

If we are unable to agree voluntary access, but we need to undertake particular surveys to inform design, a statutory notice may be relied upon.

Intrusive surveys

National Grid may drill boreholes or excavate trial pits in advance of the main construction work where they are necessary to establish ground, archaeological and/or geological condition. After consultation between the owner/occupier and National Grid, works will be carried out so as to cause the least practicable disturbance to the owner/occupier and in accordance with the National Grid Land Rights Strategy. Reasonable and provable compensation will be paid for any damage or disturbance caused.

3113

Photographic record of condition

We will prepare a photographic record of condition where access is required for intrusive survey works. The record of condition will include any accesses and compounds that are proposed to be used by the scheme.

The record of condition may consist of written notes, photographs or video recordings. A copy of any record of condition will be shared with landowners/their agents before work on site begin. This will ensure an accurate record of the prior condition of land to ensure that land is reinstated appropriately.

Trees and hedgerows

It is always our last resort to lop or fell any mature trees, however if it is unavoidable, we will consult with landowners. If there is a tree preservation order on the tree or the location is within a conservation area, the appropriate authority will also be consulted, and any lopping or felling will be done to abide with their conditions.

Any works to hedgerows will also be discussed with landowners and occupiers, with any formal approvals to be requested from the local authorities. There will also be ecological surveys to ensure wildlife is not harmed or affected by the removal of hedgerows. Following completion of the works, these hedgerows will be replaced wherever possible.

Biosecurity, soil pests and diseases

National Grid, in conjunction with the landowner /occupier, will take such reasonable biosecurity precautions as may be necessary to avoid the spreading of pests and diseases having regard to the recommendations and guidance as prescribed by the appropriate agricultural government department. National Grid will also seek to agree reasonable precautions against the spreading of pests and diseases with any landowner or occupier prior to entry onto any land or property.

Straying livestock

National Grid aims to consult with landowners/ occupiers and ensure that all reasonable precautions are taken to prevent the straying of livestock onto working areas. National Grid will compensate the owner of livestock for all injury, death or loss arising where straying is due to any act or omission on our part, following the production of a report from a veterinary expert.

Protection and reinstatement of services

National Grid will aim to ensure that provisions are made to maintain existing services during the works. Where this is not possible and existing services are affected by our works, we will take all reasonable steps to reinstate the services to their previous condition once the works are completed.

Protection of water supplies

Locating existing water supplies is important to us; you may have knowledge of supply locations which we would be grateful if you could share with us. Having this information allows us to reduce the effects of our scheme and carry out reinstatement works.

If we interrupt or accidentally damage any water supplies or other services in the land, we will repair the damage and/or provide an adequate alternative as soon as reasonably practicable.

If there appears to be any possibility of disturbance of private water supplies such as wells or springs, we will arrange, and meet the cost of sample analysis to determine quality. The data, i.e. the levels in wells and flows from springs, will be recorded and agreed before the works commence.

Fishing and sporting rights

National Grid will take all reasonably practicable steps to protect fishing and sporting rights and will pay reasonable compensation for any loss or damage to such rights arising out of the construction of the works.

Poaching and dogs

National Grid will instruct their employees that they must not carry out poaching or bring dogs on to the working areas except as may be necessary for security or other reasonable purposes.

Continuation of normal farming activities

National Grid encourages the continuation of normal farming activities prior to commencement of the project's construction works. There is a possibility that works may not progress as originally envisaged and so continuation of normal practices is advisable to ensure you do not suffer any unnecessary losses.

Contact upon commencement of works

With any National Grid project, a programme is always discussed with landowners and occupiers to ensure that they are kept informed with progress on site. National Grid aim to provide at least 10 working days' notice to the landowners and occupiers along the route before entry is taken. Where it is reasonably possible to do so, National Grid will afford landowners and occupiers time to remove standing crops before access is taken in order to mitigate losses.

Section 2
During works

Tower construction

The construction of overhead lines usually begins with access to the tower locations. To do this, an access route will have been agreed to the tower location and if appropriate, trackway or a haul road will be laid from the nearest access point. Once set up, foundations for the tower will be constructed where new towers are being installed.

The tower will then be erected. It may arrive in prefabricated kits and will be assembled on site onto the foundations. Once the tower is assembled, the conductors (cables) will be pulled from a large drum and winched from tower to tower. For new overhead line projects, the engineering team will require access to every tower for the purpose of winching the conductors.

Construction access routes

Construction access routes will be installed from the nearest and/or most suitable access road to a tower construction area. Geotextile membranes, matting or trackways may be used over particularly sensitive areas. In peaty or soft saturated clay soils, where the use of geotextile membranes is not appropriate, low ground pressure vehicles and equipment will be used.

Soil management

To prevent any unnecessary damage to soils, all construction traffic will be restricted to designated access roads. Topsoil stripping will also be restricted to the width of access roads and construction areas of the project to minimise disturbance to soil and its structure.

Topsoil and subsoil will be stored separately to prevent mixing and will be reinstated in reverse order of excavation. The height of topsoil storage bunds will be restricted to minimise risks of compaction within the soil heap.

National Grid will endeavour to undertake works to both topsoil and subsoil in suitable weather conditions, for example, when not waterlogged.

Additional land areas

Sometimes, projects may require additional land areas for the following activities and facilities:

- storing portable cabins
- welfare facilities including portable toilets
- secure works compounds
- storage of plan and/or materials
- temporary access road
- road, rail and river crossings
- areas of difficult terrain
- additional surface cables in case of emergency only.

This land will only ever be used by the project in connection to their construction works. Should any additional land be required, landowners and occupiers will be consulted with. The location and extent of these areas will be agreed with the landowners and occupiers and may be documented by way of a separate lease or licence agreement which National Grid will draft and provide to you and/or your agent.

Fencing the working width

National Grid usually fence out their Construction Working Width to protect both members of the public and livestock. This also helps to avoid trespass. Unless otherwise agreed with the landowner/occupier, the method of fencing the Construction Working Width will be livestock -proof to ensure exclusion of any stock kept on the adjoining land. Where no livestock is kept, post and rope fences or wire may be used. National Grid will exercise reasonable care and undertake practical measures to avoid entry by trespassers.

Crossing points may be included within this fencing to facilitate the continuation of agricultural operations. The crossing points will be installed at appropriate locations to enable reasonable access across the Construction Working Width. All temporary fencing will be maintained throughout construction works until the land has been reinstated, unless otherwise agreed with the landowner/occupier.

Claims for crop loss, damage and disturbance

Reasonable and proper compensation for crop loss, damage and disturbance arising out of the construction works will be paid by National Grid on a proven loss basis.

Agricultural Liaison Officers (ALOs)

National Grid will usually appoint an ALO to provide a point of contact for landowners and occupiers during construction. The ALO will be available to discuss any practical issues that might arise. They will usually be introduced to landowners and occupiers before construction commences.

Working hours

Core working hours are typically between the hours of 7am and 7pm Monday to Saturday and between 9am and 5pm on Sundays.

The nature of some of the activities means that these times and days may need to be extended occasionally for particular activities. For example, activities that require continuous 24-hour operations such as tunnelling, horizontal directional drilling and testing activities would require night-time working. Some deliveries and abnormal loads may be required outside of normal working hours. We will be sure to keep you informed of working hours specific to your property.

Security

Temporary construction compounds, including offices, are secured to protect the public and prevent unauthorised entry to site. Access to temporary construction compounds will be limited to specific entry points and personnel entries/exits will be recorded and monitored for both security and health and safety purposes.

Workers facilities and welfare

No living accommodation will be permitted on the construction site. Onsite welfare facilities will be provided for all site workers and visitors and these will be kept clean and tidy.

Where portable generators are used to provide electricity for welfare units, industry best practice will be followed to minimise noise and pollution.

Section 3
Post works completion

Reinstatement of roads
Private roads and footpaths will be made good to a condition equivalent to that existing before the commencement of the works.

Access trackways will be removed after construction. The geotextile membranes protecting the soils will also be removed and taken away from site.

Reinstatement of land
Agricultural land will be reinstated to the pre-works condition as far as reasonably possible. National Grid will reinstate effected land to the reasonable satisfaction of the landowner and occupier.

We will aim to reinstate topsoil during favourable weather conditions on appropriately contoured and prepared ground. The topsoil of agricultural land will be left in a loose, friable and workable condition and wherever possible, to its original depth over the whole working area. Subsoil will generally be loosened with an agricultural cultivator to an appropriate depth where the topsoil has been removed.

Reinstatement of field boundaries
National Grid will reinstate any fences and walls removed during construction and utilise appropriate materials for remediation activities. Hedges and hedgerow trees will be re-planted. Hedges will be replaced by whips protected by suitable fencing. National Grid will undertake ongoing hedgerow maintenance for 5 years post works or will agree a payment with the landowner as an item of claim within the full and final settlement.

Inspection and maintenance
Notice will be given to the landowner/ occupier for any subsequent entry required to the land for maintenance or inspection purposes, unless in the case of an emergency. Should any trees or hedgerows be planted in connection with the works, National Grid will commit to manage or pay for their maintenance until reasonably established.

Land management payments
National Grid will pay compensation for all reasonable and proven loss of Basic Payment Scheme (BPS) monies or payment of any other statutory land management support schemes unavoidably incurred where eligible land has been taken out of production during or after construction works. National Grid would expect any impact on BPS or similar scheme to be mitigated, where possible.

National Grid's projects may also impact on land entered into an environmental land management scheme. In these instances, National Grid will expect the landowner/ occupier to complete any necessary form, such as a derogation request, to mitigate the potential losses as a result of the construction works. National Grid will reimburse reasonable professional fees in connection with any necessary derogation request or similar completed as a result of construction works.

In accordance with the arrangements set out in this document, where required, National Grid will use reasonable endeavours to provide landowners and/or occupiers with information to assist in making BPS and any other similar applications.

Changes of ownership or occupation
National Grid maintain contact with landowners and occupiers of land crossed by their equipment to ensure accurate records are held to facilitate maintenance activities and protection of assets. Once a project has been completed, National Grid will provide their contact details so that landowners nd occupiers can notify them of any changes in landownership or of any other interest changes connected to the land.

Protection of the easement strip
National Grid will carry out periodic inspections of their easements and will therefore require access to and along the easement strip. As such, the easement strip should be maintained in line with the terms of the deed of easement.

As built plans
Upon completion of the works, National Grid will serve a Completion Notice to the landowner which will include 'as built' plans.

National Grid plc
1-3 Strand
Charing Cross
London
WC2N 5EH
United Kingdom

nationalgrid.com

December 2021. GR01635

3118

Electricity Transmission

Land Rights Strategy and Payment Schedule for Assets

Version 1

The transmission network is critical national infrastructure and therefore it is crucial that National Grid has the necessary land and land rights to install, operate, access, maintain, repair and protect the transmission network as part of the transition to a cleaner and greener future.

National Grid has an approach called the Land Rights Strategy, which provides a consistent methodology for acquiring land and land rights for their infrastructure projects. This approach is applied across infrastructure projects promoted as Development Consent Order (DCO) and Compulsory Purchase Order (CPO) schemes.

National Grid's preference will always be to secure land rights on a voluntary basis, as this enables the rights being acquired to be tailored to the specific requirements of the project. It is also important in supporting ongoing landowner relations.

The strategy has been implemented on all National Grid Transmission projects since 2010 requiring land and rights acquisition and is under continuous review to ensure that it is still fit for purpose, achieves business requirements, and meets the expectations of third-party landowners and occupiers. National Grid was one of the first utility companies to formally adopt and promote this approach. The Land Rights Strategy has evolved to take into account specific requirements of legislation, evolving industry best practice and also to meet the needs of particular projects.

What is the Land Rights Strategy?

1. Provides a consistent methodology for acquiring land and land rights for transmission infrastructure projects;
2. Helps to encourage landowners to voluntarily agree to enter into the required agreements, which then helps to preserve long term stakeholder relationships;
3. Ensures that there is consistency in the payments made to obtain land rights, and that all landowners are treated fairly and equally and in accordance with the expectations of existing legislation;
4. Aligns the approach taken for electricity transmission land rights across the UK National Grid Group Plc companies.

In summary, the overarching strategy is:

All affected landowners are offered Option Agreements to enable National Grid to acquire land, permanent rights over land or to obtain temporary land rights, before the DCO/CPO is granted. National Grid seeks temporary rights for construction activities, and permanent rights (easements) for the "as-built" assets (including all maintenance rights, access, drainage and landscaping/environmental mitigation that may be required for the project).

In parallel with seeking voluntary agreements, through the DCO/CPO process we apply for compulsory acquisition rights as a fall back, should Option Agreements not be secured voluntarily or should there be any issue with implementation of voluntary agreements (e.g. due to events such as insolvency, death/intestacy, loss of capacity etc). National Grid's preference will always be to secure land rights on a voluntary basis.

National Grid plc. National Grid House, Warwick Technology Park, Gallows Hill, Warwick. CV34 6DA United Kingdom
Registered in England and Wales No. 4031152

nationalgrid

The payments schedule

1. Payments for surveys and investigation works

Whilst voluntary agreement is always sought, National Grid has statutory rights to gain access to land for surveys and investigation works. As a result, these payments for surveys are not payments for the grant of access rights, but are payments in recognition of damage and disturbance that potentially may be caused by survey and investigation works. National Grid will make the following payments:

Non-intrusive surveys

A payment of **£500** advance compensation, per land holding, for a 12 month period.

For night-time visits between 21:00 – 06:00, an advance payment of compensation of **£250** will be made for a 12 month period.

Intrusive surveys

Boreholes

A one-off **£350** advance payment of compensation for boreholes, per borehole.

Trial pits

A one-off **£350** advance payment of compensation for trial pits/holes, per trial pit.

Water monitoring

For water monitoring equipment an advance payment of compensation of **£150** per gauge will be made per 12 month period, to cover any site visits.

Survey licence signing fee

In addition, a one-off licence signing fee of **£250** will be made if the licence is signed within a two month period.

Notes

Any damage in excess of the above figures would be agreed on an individual basis, on production of evidence and proof of loss.

2. Payments in respect of permanent rights

New overhead lines

A one-off payment in respect of permanent rights per tower and associated oversail, including access rights:

- permanent grass land - **£6000** (or proportion based on land ownership)
- arable land - **£8000** (or proportion based on land ownership)

A one-off payment in respect of permanent rights per oversail (where no tower rights are required):

0-49m	50-99m	100m+
£500	£750	£1000

Existing overhead lines

If there is an easement in place but the terms are not fit for purpose, then a one-off payment to vary the agreement will be offered in the sum of **£1000**.

If there is no easement, or only a wayleave is in place, or if there is no agreement in place at all, then a one-off payment will be made as per the appropriate tower rate for a new easement to be completed.

Underground cables

- agricultural land - **80%** of land value over the easement width.
- non-agricultural land - **50%** of land value over the easement width.

These will be subject to a minimum land value **£7500/hectare**, and a minimum easement payment of **£500**.

Third party access rights

A one-off payment of **£1000** per tower accessed, will be made in return for permanent access rights over third party land for construction and future maintenance activities.

Incentive payments

An incentive payment of **20%** will be applied across any permanent land rights payments (as set out above for new infrastructure), if:

1. the Heads of Terms of agreement are returned to National Grid within an **8 week** period, and;
2. the Option Agreement is legally completed within a further **12 weeks**.

Easement payment instalments

Under the terms of the Option Agreement, National Grid will have an option to take entry onto land to construct new electricity transmission assets and following construction to complete the Easement. The payments will be made in instalments:

- **25%** of the land rights payment is payable on completion of the Option Agreement
- **50%** of the land rights payment is payable on taking entry onto land for construction under the Option Agreement
- **25%** of the land rights payment is payable on completion of Easement following construction together with any other payment(s) already agreed.

3. Injurious affection

National Grid acknowledges that any proposed new work may cause concern to landowners. In addition to the other payments outlined, ‘injurious affection’ and any other appropriate Heads of Claim will be considered on an individual basis in accordance with current legislation.

4. Crop loss, damage and disturbance claims

This will be assessed and paid on a proven loss basis.

5. Land acquisition

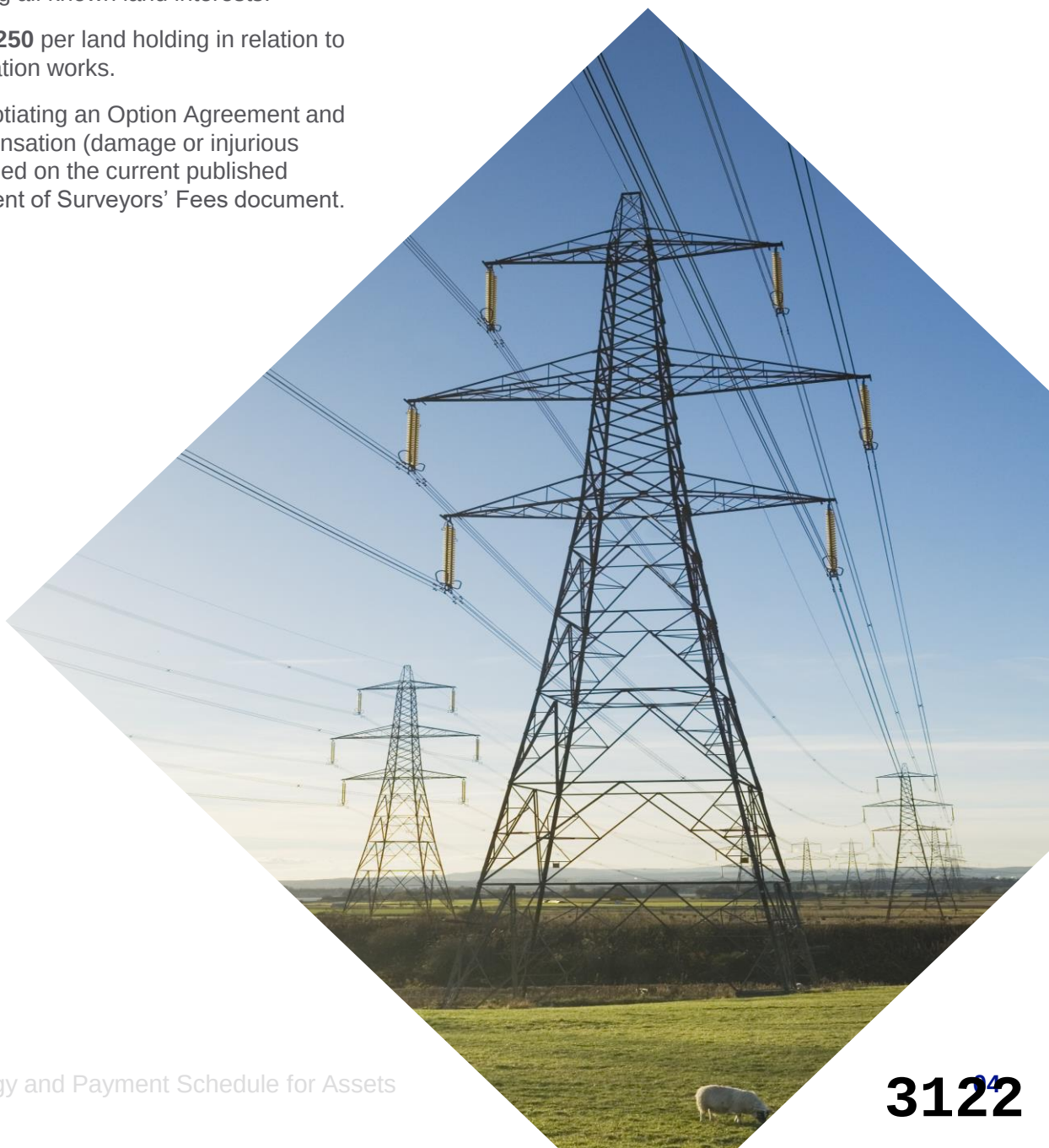
Land acquisitions (permanent or temporary) will be agreed on an individual basis.

6. Agents fees (paid via landowner/occupier)

Fixed fee of **£150** for professional land agency services in relation to the return of a completed and signed Land Interest Questionnaire for each landholding declaring all known land interests.

Single fixed fee of **£250** per land holding in relation to survey and investigation works.

Agents fees for negotiating an Option Agreement and for additional compensation (damage or injurious affection) will be based on the current published National Grid Payment of Surveyors’ Fees document.



STATUTORY INSTRUMENTS

2019 No. 0000

INFRASTRUCTURE PLANNING

The Port of Tilbury (Expansion) Order 2019

Made - - - -	*20 February 2019*
Coming into force - -	*13 March 2019*

CONTENTS

SCHEDULES

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

The Panel, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 74(2)(**c**) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

In relation to the compulsory acquisition of the Order land which is common land, the Secretary of State is satisfied, having considered the report and recommendation of the Panel and in accordance with section 131(3)(**d**) of the 2008 Act, that section 131(4) applies.

The Secretary of State, in exercise of the powers conferred by sections 114(**e**), 115(**f**) and 120(**g**) of, and paragraphs 1-4, 10-18, 20, 22, 26, 30A, 30B, 32-33, 36 and 37 of Schedule 5 to, the 2008 Act, makes the following Order—

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/752 and S.I. 2018/378.
(**c**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**d**) As amended by section 24(2)(a) of the Growth and Infrastructure Act 2013 (c. 27).
(**e**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**f**) As also amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**g**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Port of Tilbury (Expansion) Order 2019 and comes into force on xx February 2019.

Interpretation

2.—(1) In this Order, unless otherwise stated—

"the 1845 Act" means the Railways Clauses Consolidation Act 1845(**a**);

"the 1961 Act" means the Land Compensation Act 1961(**b**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**c**);

"the 1968 Act" means the Port of London Act 1968(**d**);

"the 1974 Act" means the Control of Pollution Act 1974(**e**)

"the 1980 Act" means the Highways Act 1980(**f**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**g**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**h**);

"the 1990 Act" means the Town and Country Planning Act 1990(**i**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**j**);

"the 1991 Transfer Scheme" means the Port of Tilbury Transfer Scheme 1991 as confirmed by the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992(**k**) made under section 22 of the Ports Act 1991(**l**);

"the 2004 Act" means the Traffic Management Act 2004(**m**);

"the 2008 Act" means the Planning Act 2008(**n**);

"the 2009 Act" means the Marine and Coastal Access Act 2009(**o**);

"address" includes any number or address for the purposes of electronic transmission;

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

"the authorised development" means the development described in Schedule 1 (authorised development) and any other development within the meaning of section 32 of the 2008 Act authorised by this Order;

"authorised officer" means a Constable, the Company Harbour Master, a PLA Harbour Master, and a person authorised by the Company for the purpose of enforcing the byelaws;

"the book of reference" means the document of that description set out in Schedule 11 (documents to be certified) certified by the Secretary of State as the book of reference for the purposes of this Order;

(**a**) 1845 c. 20.
(**b**) 1961 c. 33.
(**c**) 1965 c. 56.
(**d**) 1968 c. xxxii.
(**e**) 1974 c. 40.
(**f**) 1980 c. 66.
(**g**) 1981 c. 66.
(**h**) 1984 c. 27.
(**i**) 1990 c. 8.
(**j**) 1991 c. 22.
(**k**) S.I. 1992/284.
(**l**) 1991 c. 52.
(**m**) 2004 c. 18.
(**n**) 2008 c. 29.
(**o**) 2009 c. 23.

"building" includes any structure or erection or any part of a building, structure or erection;

"business day" means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(**a**);

"Cadent" means Cadent Gas Limited (company number 10080864) whose registered office is at Ashbrook Court Prologis Park, Central Boulevard, Coventry, CV7 8PE;

"carriageway" has the same meaning as in the 1980 Act;

"the classification of roads plans" means the plans of that description set out in Schedule 11 certified by the Secretary of State as the classification of roads plans for the purposes of this Order;

"commence" means beginning to carry out any material operation (as defined in section 56(4)(**b**) of the 1990 Act) forming part 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, and "commencement" is to be construed accordingly;

"the Company" means Port of Tilbury London Limited (company number 02659118) of Leslie Ford House, Tilbury Freeport, Tilbury, Essex, RM18 7EH;

"the Company Harbour Master" means every person having the powers of a harbourmaster due to their appointment as dockmaster by the Company under the 1968 Act;

"a Constable" means a constable appointed under section 154(**c**) (appointment, etc., of constables) of the 1968 Act;

"construct" includes execution, placing, altering, replacing, relaying and removal and "construction" is to be construed accordingly;

"cycle track" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(**d**);

"the deemed marine licence" means the marine licence granted by article 53 (deemed marine licence);

"electronic transmission" means a communication transmitted—

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

(b) by other means provided it is in an electronic form;

"the engineering drawings and plans" means the documents of that description set out in Schedule 11 certified by the Secretary of State as the engineering drawings and plans for the purposes of this Order;

"the environmental statement" means the documents of that description set out in Schedule 11 certified by the Secretary of State as the environmental statement for the purposes of this Order;

"the existing river jetty" means the jetty existing in the river Thames at the date of this Order coming into force, as shown shaded blue and labelled *Existing Jetty Superstructure* on sheet 3 of the works plans;

"the extended port limits" means the extended port limits shown on the extended port limits plan;

(**a**) 1971 c. 80.
(**b**) As amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 56 but none are relevant to this Order.
(**c**) As amended by Part 1 of Schedule 6 to the Criminal Justice Act 1972 (c. 71).
(**d**) The definition of "cycle track" was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) act 1988 (c. 54).

"the extended port limits plan" means the plan of that description set out in Schedule 11 certified by the Secretary of State as the extended port limits plan for the purposes of this Order;

"flood risk activity" has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016(**a**);

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

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

"the highway management contractor" means the management contractor appointed by Highways England under the DBFO contract (as defined in paragraph 120(2) of Schedule 10 (protective provisions)) in respect of the highway on that part of the strategic road network within which the HE works (as defined in paragraph 120(2) of Schedule 10) are situated;

"the land, special category land and crown land plans" means the plans of that description set out in Schedule 11 certified by the Secretary of State as the land, special category land and crown land plans for the purposes of this Order;

"landing place" has the same meaning as in the 1968 Act;

"the limits of deviation" means the limits of deviation referred to in article 7 (limits of deviation);

"the limits of dredging plan" means the plan of that description set out in Schedule 11 certified by the Secretary of State as the limits of dredging plan for the purposes of this Order;

"maintain" includes inspect, repair, adjust, alter, remove or reconstruct, and any derivative of "maintain" is to be construed accordingly;

"mean high water level" means the level which is half way between mean high water springs and mean high water neaps;

"mean high water neaps" means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tide is at its least;

"mean high water springs" means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tide is at its greatest;

"the MMO" means the Marine Management Organisation;

"National Grid" means National Grid Electricity Transmission plc (company number 02366977) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 (meaning of "subsidiary" etc.) of the Companies Act 2006(**b**)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"the Order land" means the land shown coloured pink and the land shown coloured yellow on the land, special category land and crown land plans, and described in the book of reference;

"the Order limits" means the Order limits shown on the works plans;

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(**c**);

(**a**) S.I. 2016/1154, as amended by S.I. 2017/1012, S.I. 2017/1075, S.I. 2018/110, S.I. 2018/428, S.I. 2018/575 and S.I. 2018/1227.

(**b**) 2006 c. 46.

(**c**) 1981 c. 67. The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 but none are relevant to this Order.

"the PLA" means the Port of London Authority;

"the PLA Harbour Master" means any harbour master of the PLA and any of their authorised deputies and assistants and any person authorised by the PLA to act in that capacity;

"the Port of Tilbury" means the harbour undertaking of the Company at the Port of Tilbury in Essex;

"the relevant planning authority" means the local planning authority for the land in question, being Thurrock Council, or any successor to it as planning authority;

"the rights of way and access plans" means the plans of that description set out in Schedule 11 certified by the Secretary of State as the rights of way and access plans for the purposes of this Order;

"statutory undertaker" means any statutory undertaker for the purposes of section 127(8) (statutory undertakers' land) of the 2008 Act;

"street" means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

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

"traffic authority" has the same meaning as in section 121A(**a**) (traffic authorities) of the 1984 Act;

"the traffic regulation measures plan" means the plan of that description set out in Schedule 11 certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order;

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

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"the UK marine area" has the meaning given to it in section 42 (UK marine area) of the 2009 Act;

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

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

"the works plans" means the plans of that description set out in Schedule 11 certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the enjoyment of interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

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

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) 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 plan to which the reference applies.

(**a**) As inserted by section 168(1) of, and paragraph 70 of Part 2 to Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22).

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

Disapplication of legislation, etc.

3.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

(a) sections 66 to 75 (control of works and dredging) of the 1968 Act;

(b) the Thames Barrier and Flood Prevention Act 1972(**a**);

(c) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991(**b**);

(d) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(**c**);

(e) the provisions of any byelaws made under section 66(**d**) (powers to make byelaws) of the Land Drainage Act 1991;

(f) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 in respect of a flood risk activity only; and

(g) the provisions of the Neighbourhood Planning Act 2017(**e**) insofar as they relate to temporary possession of land under articles 32 (temporary use of land for constructing the authorised development) and 33 (temporary use of land for maintaining the authorised development) of this Order.

(2) Any works licence granted by the PLA under section 66 (licensing of works) of the 1968 Act in respect of an existing structure, and still having effect immediately before this Order comes into force, is extinguished and no longer has effect from the date this Order comes into force.

(3) If such a works licence applies to an existing structure as well as to other works or structures paragraph (2) has effect to extinguish the works licence only in relation to, and so far as it applies to, the existing structure.

(4) Any existing structure may remain and subsist in the river Thames under the authority of, and subject to the terms of, this Order and the requirement to obtain a works licence under section 66 of the 1968 Act does not apply to the structure.

(5) If any part of the 'B station' intake structures comes into the ownership of the Company at any time after this Order comes into force—

(a) on the day after the Company serves a notice on the PLA to that effect, any works licence granted by the PLA under section 66 of the 1968 Act in respect of that part of that 'B station' intake structure, and still having effect at that time, is extinguished and no longer has effect; and

(b) thereafter that part of the 'B station' intake structure in question may remain and subsist in the river Thames under the authority of, and subject to the terms of, this Order and the requirement to obtain a works licence under section 66 of the 1968 Act does not apply to that part of that 'B station' intake structure for so long as—

(**a**) 1972 c. xlv.

(**b**) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(**c**) 1991 c. 59.

(**d**) As substituted by section 31 of, and paragraphs 25 and 38 of Schedule 2 to the Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).

(**e**) 2017 c. 20.

(i) it remains in the ownership of the Company;

(ii) the Company continues to operate and maintain the authorised development as a working port facility; and

(iii) it is not used as part of the remaining 'B station' intake structures.

(6) If after paragraph (5) has taken effect—

(a) any of the 'B station' intake structures—

(i) are used as part of the remaining 'B station' intake structures; or

(ii) ceases to belong to the Company; or

(b) the Company ceases to operate and maintain the authorised development as a working port facility,

the Company must forthwith serve on the PLA notice of that event with full particulars of the change and details of any new owner or user of the 'B station' intake structure in question, and on the day after service of the notice paragraph (5)(b) ceases to have effect in relation to the part of the 'B station' intake structures to which the notice relates.

(7) The PLA must not grant or vary—

(a) a river works licence under section 66 of the 1968 Act; or

(b) a dredging licence under section 73(**a**) (licensing of dredging) of that Act,

licensing any works or dredging within the extended port limits without the consent of the Company (acting in exercise of its statutory functions).

(8) Despite the provisions of section 66(1)(b) of the 1968 Act, the grant or variation by the PLA of a river works licence in relation to any part of the river Thames, belonging to the PLA and situated within the extended port limits, and in respect of which the Company has a proprietary interest is not, without the consent of the Company, to be deemed to confer on the holder of the licence such rights in, under or over the land as are necessary to enable the holder of the licence to enjoy the benefit of the licence.

(9) The Company must not unreasonably withhold or delay its consent under paragraph (7) or paragraph (8) but may require reasonable modifications to the proposed works or dredging or impose reasonable terms and conditions on them, and in considering whether to grant consent, require modifications or impose terms and conditions the Company (acting in exercise of its statutory functions) must have regard only to the matters mentioned in paragraph (10).

(10) The matters referred to in paragraph (9) are the prevention of significant interference with—

(a) the works comprising the authorised development within the extended port limits;

(b) access to and egress from those works;

(c) the use of those works or of the land within the extended port limits, by the Company for the purposes of performing its statutory functions or by users of those works in exercise of their right under section 6(1) (public access to port premises) of the 1968 Act; or

(d) the performance of any of the Company's or the Company Harbour Master's functions connected with environmental protection or health and safety.

(11) Despite the provisions of section 193(2) (general and local lighthouse authorities) of the Merchant Shipping Act 1995(**b**), nothing in this Order constitutes the Company as a local lighthouse authority.

(12) Despite the provisions of section 2 (port health districts and authorities) of the Public Health (Control of Disease) Act 1984(**c**), the Company is not to be designated as a port health authority in respect of the land and premises within the extended port limits.

(**a**) As amended by section 46 of the Criminal Justice Act 1982 (c. 48).
(**b**) 1995 c. 21. As amended by paragraph 6 of Schedule 6 to the Merchant Shipping and Maritime Security Act 1997 (c. 28).
(**c**) 1984 c.22

(13) In this article—

"the 'B station' intake structures" means—

(a) the two 'B station' cooling water intake caissons shown on sheet 3 of the works plans;

(b) the two 'B station' cooling water intake tunnels shown on sheet 3 of the works plans between those cooling water intake caissons and mean high water level; and

(c) any related ancillary structures, plant or pipework; and

"existing structure" means any of the following existing structures and parts of existing structures within the river Thames shown on sheet 3 of the works plans—

(a) the 'A station' cooling water intake caisson and the 'A station' cooling water intake tunnel between that caisson and mean high water level;

(b) the 'A station' cooling water outfall caisson and the 'A station' cooling water intake tunnel between that caisson and mean high water level;

(c) the existing Anglian Water jetty; and

(d) the existing river jetty insofar as it does not comprise any of the 'B station' intake structures.

Application of enactments relating to the Port of Tilbury

4.—(1) Subject to paragraphs (2), (3) and (6) and Part 3 of Schedule 10 (protective provisions), from the date of the coming into force of this Order the functions under the 1968 Act which were or may have been transferred to the Company by the 1991 Transfer Scheme in relation to the Port of Tilbury apply and have effect in relation to the extended port limits.

(2) Paragraph (1)—

(a) does not apply to any function conferred by the following provisions of the 1968 Act—

(i) section 5(1)(**a**) (general duties and powers);

(ii) section 64 (use of Thames water), in respect of the discharge of water to the river Thames; or

(iii) section 85 (agreements about calling at landing places); and

(b) applies the functions exercisable under section 5AA(**b**) (Company's functions subordinate to Port Authority's functions) of the 1968 Act subject to the amendments in paragraph (6).

(3) In the application of the functions under the 1968 Act which apply to the extended port limits by virtue of paragraph (1), for the purposes of paragraph 1 of Schedule 4 (amendments to the Port of London Act 1968) to the 1991 Transfer Scheme—

(a) any dock or landing place situated within the extended port limits is to be treated as part of the Company's docks;

(b) the works and land within the extended port limits are to be treated as part of the Company's port premises; and

(c) the undertaking carried on by the Company within the extended port limits is to be treated as part of the Company's Port of Tilbury undertaking.

(4) Any part of the river Thames situated within the extended port limits is to be treated as having been designated by the PLA for the purposes of section 112 (special directions to vessels in the Thames) of the 1968 Act as an area in which the power to give special directions under that provision applies.

(5) The General Trading Regulations made by the Company in 2005 under section 22 (charges regulations) of the 1968 Act and which apply to the Port of Tilbury, together with any changes to

(**a**) As treated as substituted by paragraph 5 of Schedule 4 to the 1991 Transfer Scheme.
(**b**) As treated as inserted by paragraph 6 of Schedule 4 to the 1991 Transfer Scheme.

them (whensoever made), apply to the extended port limits from the date the authorised development opens for operational use unless otherwise notified by the Company.

(6) Section 5AA (Company's functions subordinate to Port Authority's functions) of the 1968 Act as applied to the extended port limits by paragraph (1) is treated as being amended in relation to the extended port limits as if—

(a) the section was renumbered as subsection (1);

(b) for paragraph (a) of the renumbered subsection (1) there is substituted—

"(a) any enactment (including any provision of this Act or of any subordinate legislation) whether passed or made before or after the date of this Act and relating to or made by the Port Authority; and";

(c) as if in paragraph (b) of the renumbered subsection (1) for "local statutory provision" there is substituted "enactment, and is to be exercised in accordance with subsections (2) and (4)"; and

(d) as if after the renumbered subsection (1) there is inserted—

"(2) Subject to subsection (3), the Port Authority may after consulting the Company (except in cases of emergency) notify the Company in writing of—

(a) specified functions of the Company, or

(b) specified circumstances, manner or extent of the carrying out of any function of the Company,

which the Port Authority considers may have a significant effect on the need for it to exercise any of its statutory functions in the river Thames outside the extended port limits, or significantly affect how the Port Authority exercises those functions.

(3) The Port Authority may not give a notification under subsection (2) in relation to—

(a) construction of the works specified in Schedule 1 to the Port of Tilbury (Expansion) Order 2019; or

(b) any specified function or specified work approved by the Port Authority under Part 3 of Schedule 10 (protective provisions) to that Order which is carried out by the Company in the exercise of the powers of article 41 (maintenance of the authorised development and operation of the Company's harbour undertaking) of that Order for the purposes of the maintenance of the authorised development, or operation of the Company's harbour undertaking.

(4) The company must not—

(a) exercise any function specified in a notice given under subsection (2)(a), or

(b) exercise any function in any circumstances, manner or extent specified in a notice given under subsection (2)(b),

without the consent of the Port Authority, which must not be unreasonably withheld or delayed.".

Incorporation of the 1845 Act

5.—(1) The following provisions of the 1845 Act are incorporated in this Order—

section 24 (penalty for obstructing construction of railway);

section 47 (provision in cases where roads are crossed on a level);

section 58 (company to repair roads used by them), subject to paragraph (3);

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (gates, bridges, etc.);

section 73 (accommodation works not to be required after five years);

section 75 (penalty on persons omitting to fasten gates);

section 86 (company to employ locomotive power, carriages, etc.);

section 105 (penalty for bringing dangerous goods on railway); and

section 145 (penalties to be summarily recovered before two justices).

(2) In those provisions, as incorporated in this Order—

"the company" means the Company;

"the goods" includes anything conveyed on the railway authorised to be constructed by this Order;

"the railway" means any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other works associated with the railway; and

"the Special Act" means this Order.

(3) In section 58 of the 1845 Act, as incorporated in this Order, for the words from "the determination of two justices" to the end there is substituted the word "arbitration".

PART 2

WORKS PROVISIONS

Principal powers

Development consent granted by the Order

6. Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the Company is granted development consent for the authorised development.

Limits of deviation

7.—(1) The authorised development listed in Schedule 1 (authorised development) must be constructed within the Order limits but in doing so the Company may deviate—

(a) in the case of—

(i) Work No. 9A, laterally so that the centre line of the work may be situated—

(aa) up to 1 metre to the south of the centre line shown on the works plans; and

(bb) to the north of the centre line of that work shown on the works plans, up to the centre line of Work No. 12; and

(ii) Work No. 12, laterally so that the centre line of the work may be situated—

(aa) up to 1 metre to the north of the centre line shown on the works plans; and

(bb) to the south of the centre line of that work shown on the works plans, up to the centre line of Work No. 9A;

(b) in the case of any other linear work comprised in any part of the authorised development listed in Schedule 1, laterally so that the centre line of the work may be situated up to 1 metre either side of the centre line of that work shown on the works plans;

(c) in the case of a non-linear work comprised in any part of the authorised development listed in Schedule 1, laterally from the lines or situations of that work shown on the works plans to the extent of the limits of deviation shown on the works plans for that work;

(d) in the case of a linear work comprised in any part of the authorised development listed in Schedule 1, vertically from the levels of the authorised development shown on the engineering drawings and plans—

(i) to any extent upwards not exceeding 0.5 metres; and

(ii) to any extent downwards as may be found to be necessary or convenient; and

(e) in the case of any dredging within the Order limits carried out during the construction of the authorised development, to any extent downwards to the limits shown on the limits of dredging plan.

(2) In this article, reference to—

(a) a "linear work" is a reference to any work shown on the works plans by way of a centre line; and

(b) a "non-linear work" is a reference to any other work shown on the works plans.

Streets

Street works

8.—(1) The Company may, for the purposes of the authorised development, enter on so much of any street and may—

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

(b) tunnel or bore under the street;

(c) place apparatus in the street;

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

(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

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

(3) The Company must not construct works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

Application of the 1991 Act

9.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(**a**) (dual carriageways and roundabouts) of the 1980 Act or section 184(**b**) (vehicle crossings) of that Act.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the Company.

(3) The following provisions of the 1991 Act do not apply in relation to any works constructed under the powers of this Order—

section 56 (directions as to timing);

section 56A (power to give directions as to placing of apparatus);

section 58 (restrictions following substantial road works);

(**a**) As amended by Schedule 17 to the Local Government Act 1985 (c. 51) and Schedule 9 to the 1991 Act.

(**b**) As amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 9 of Part 1 of Schedule 8, and Schedule 9, to the 1991 Act.

section 58A (restriction on works following substantial street works);

section 73A (power to require undertaker to re-surface street);

section 73B (power to specify timing, etc., of re-surfacing);

section 73C (materials, workmanship and standard of re-surfacing);

section 78A (contributions to costs of re-surfacing by undertaker); and

Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the construction of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Company under the powers conferred by article 13 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(**a**) referred to in paragraph (4) are—

section 54(**b**) (advance notice of certain works), subject to paragraph (6);

section 55(**c**) (notice of starting date of works), subject to paragraph (6);

section 57(**d**) (notice of emergency works);

section 59(**e**) (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 10 (construction and maintenance of new, altered or diverted streets)—

(a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the Company is not, by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

(b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(8) Any provision contained in Part 3 of the 1991 Act does not apply to the Company or to the street authority in any case where Part 7 (for the protection of Thurrock Council (as highway authority)) or Part 9 (for the protection of Highways England) of Schedule 10 (protective provisions) contains either an equivalent provision or a provision which conflicts with the provision in Part 3.

(**a**) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
(**b**) As also amended by section 49(1) of the Traffic Management Act 2004.
(**c**) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
(**d**) As also amended by section 52(3) of the Traffic Management Act 2004.
(**e**) As amended by section 42 of the Traffic Management Act 2004.

Construction and maintenance of new, altered or diverted streets

10.—(1) Subject to paragraph (4), any street constructed under this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of the Company for a period of 12 months from its completion and thereafter by the street authority.

(2) Subject to paragraph (4), where a street is altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, that part of the street must be maintained by and at the expense of the Company for a period of 12 months from its completion and thereafter by the street authority.

(3) Where land not previously part of the public highway comes to form part of the public highway by virtue of the construction, diversion or alteration of the streets set out in Schedule 4 (permanent stopping up of highways and private means of access), unless otherwise agreed in writing with the street authority, the land is deemed to have been dedicated as public highways on the expiry of a period of 12 months from completion of the street that has been constructed, altered or diverted.

(4) In the case of any bridge or any other structure constructed under this Order to carry a street, both the street surface and structure of the bridge or other structure must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of the Company for a period of 24 months from its completion and thereafter by the street authority.

(5) In any action against the Company in respect of loss or damage resulting from any failure by the Company 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 Company 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.

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

(a) the character of the street and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the Company 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 Company could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

(7) The date of completion of any works referred to in paragraphs (1), (2), (3) and (4) is to be agreed between the Company and the street authority, acting reasonably.

Classification of roads

11.—(1) The roads described in paragraph 1 of Schedule 3 (classification of roads, etc.) are to be classified as part of the existing A1089 St Andrew's Road from such day as the Company may determine, as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(2) The roads described in paragraph 2 of Schedule 3 are to be classified as the classified unnumbered Ferry Road from such day as the Company may determine, as if such classification had been made under section 12(3) of the 1980 Act.

(3) The roads described in paragraph 3 of Schedule 3 cease to be a classified road from such day as the Company may determine, as if such classification had been made under section 12(3) of the 1980 Act.

(4) The roads described in paragraph 4 of Schedule 3 are to be classified as the classified unnumbered link road from such day as the Company may determine, as if such classification had been made under section 12(3) of the 1980 Act.

(5) The Company must publish a notice in the *Thurrock Gazette* or any other local newspaper circulating in the area on each occasion that it makes a determination under this article.

Permanent stopping up and restriction of use of highways and private means of access

12.—(1) Subject to the provisions of this article, the Company may, in connection with the construction of the authorised development, stop up each of the highways and private means of access specified in columns (1) and (2) of Parts 1, 2 and 3 of Schedule 4 (permanent stopping up of highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No highway or private means of access specified in columns (1) and (2) of Parts 1 and 3 of Schedule 4 (being a highway or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

(a) the new highway or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or

(b) a temporary alternative route for the passage of such traffic as could have used the highway or private means of access to be stopped up is first provided and subsequently maintained by the Company, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the highway or private means of access until the completion and opening of the new highway or private means of access in accordance with sub-paragraph (a).

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

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

(a) the Company is in possession of the land;

(b) there is no right of access to the land from the highway concerned;

(c) there is reasonably convenient access to the land otherwise than from the highway concerned; or

(d) the owners and occupiers of the land have agreed to the stopping up.

(5) Not less than 28 days prior to the whole or part stopping up of a highway under this article, the Company must erect a notice upon the highway in question at, or as close as reasonably practicable to, each point of stopping up containing the date and extent of the stopping up and, in the case of a highway mentioned in Part 1 of Schedule 4, giving details of the substitute or new highway to be provided.

(6) Where a highway or private means of access has been stopped up under this article—

(a) all rights of way over or along the highway or private means of access so stopped up are extinguished; and

(b) the Company may appropriate and use for the purposes of the authorised development so much of the site of the highway or private means of access as is bounded on both sides by land owned by the Company.

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

(8) This article is subject to article 35 (apparatus and rights of statutory utilities in stopped up streets).

Temporary stopping up and restriction of use of streets

13.—(1) The Company may, during and for the purposes of constructing the authorised development, 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 (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the Company may use any street temporarily stopped up under the powers conferred by this article and lying within the Order limits as a temporary working site.

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

(4) The Company must not temporarily stop up, alter or divert any street under this article without the consent of the street authority, which may attach reasonable conditions to its consent but must not be unreasonably withheld or delayed.

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

Access to works

14. The Company may, with the consent of the street authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the Company reasonably requires for the purposes of constructing the authorised development.

Agreements with street authorities

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

(a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;

(b) the strengthening or improvement of any street under the powers conferred by this Order;

(c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;

(d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;

(e) the construction in the street of any of the authorised development; or

(f) such other works as the parties may agree.

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

(a) provide for the street authority to carry out any function under this Order which relates to the street in question;

(b) include an agreement between the Company and the street authority specifying a reasonable time for completion of the works;

(c) provide for the dedication of any new street as public highway further to section 38(**a**) (power of highway authorities to adopt by agreement) of the 1980 Act; and

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

Use of private roads for construction

16.—(1) The Company may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised development.

(2) The Company must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

Level crossings

17. Upon the stopping of Footpath 144 (as shown on sheet 2 of the rights of way and access plans) in accordance with article 12, the level crossing which forms part of that footpath is closed and discontinued.

Supplementary powers

Discharge of water

18.—(1) Subject to paragraphs (3) and (4), the Company may use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the Company under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**b**).

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

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

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

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

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

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016.

(**a**) As amended by Schedule 17 to the Local Government Act 1985 (c. 51), section 22(1) of the 1991 Act and paragraphs 1 and 19 of Part 1 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

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

(7) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

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

Protective works to buildings

19.—(1) Subject to the following provisions of this article, the Company may at its own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development as the Company considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction in the vicinity of the building of any part of the authorised development; or

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

(3) Subject to paragraph (5), for the purpose of determining how the functions under this article are to be exercised the Company 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 to a building under this article the Company may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

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

and if it is reasonably required in either case, the Company may enter and take possession or exclusive possession (in whole or in part) of the building and land for the purpose of carrying out the protective works.

(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 and take possession of a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter and take possession of land,

the Company must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise 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), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works, or to enter the building or land, to be referred to arbitration under article 60 (arbitration).

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

(8) Where—

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

(b) within the period of 5 years beginning with the day on which the part of the authorised development constructed 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 construction or use of that part of the authorised development,

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

(9) Without affecting article 40 (no double recovery), nothing in this article relieves the Company from any liability to pay compensation under section 152(**a**) (compensation in case where no right to claim in nuisance) of the 2008 Act.

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

(11) Section 13(**b**) (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(**c**) (application of compulsory acquisition provisions) of the 2008 Act.

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

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

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or use of the authorised development; and

(c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

Authority to survey and investigate land

20.—(1) The Company may for the purposes of this Order enter on—

(a) any land shown within the Order limits; and

(b) where reasonably necessary, any land which is adjacent to but outside the Order limits, or which may be affected by the authorised development, and—

(i) survey or investigate the land;

(ii) without limitation to the scope of paragraph (i), make trial holes in such positions on the land as the Company thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(iii) without limitation to the scope of paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and

(iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

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

(a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and

---

(**a**) As amended by S.I. 2009/1307.
(**b**) As amended by sections 62(3) and 139(4)-(9) of, paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 223 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
(**c**) As amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority.

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

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto 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.

Felling or lopping of trees and removal of hedgerows

21.—(1) The Company may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if the Company reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the Company 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 (determination of questions of disputed compensation) of the 1961 Act.

(4) The Company may, for the purposes of constructing the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article "hedgerow" includes—

(a) hedgerows to which the Hedgerow Regulations 1997(**a**) apply; and

(b) any part of a hedgerow.

Works in the river Thames: conditions

22.—(1) Subject to the provisions of this article, during the construction of the authorised development the public right of navigation over any part of the river Thames that is situated within the Order limits may be temporarily suspended with the written approval of the PLA.

(2) Not later than 28 business days prior to the proposed commencement date of any suspension of the public right of navigation, the Company must apply to the PLA for approval under paragraph (1) for such suspension (except in the case of an emergency when the Company must give such notice as is reasonably practicable).

(3) An application for approval under paragraph (2) must provide details of the proposed suspension, including particulars of—

(a) its commencement date;

(b) its duration; and

(**a**) S.I. 1997/1160.

(c) the affected area,

and must include an explanation of the need for the proposed suspension.

(4) The PLA may in relation to any application for approval made under paragraph (2) impose reasonable conditions for any purpose described in paragraph (5).

(5) Conditions imposed under paragraph (4) may include conditions as to—

(a) the limits of any area subject to a temporary suspension of the public right of navigation;

(b) the duration of any temporary suspension;

(c) the means of marking or otherwise providing warning in the river Thames of any area affected by a temporary suspension of the public right of navigation; and

(d) the use by the Company of the area subject to any temporary suspension so as not to interfere with any other part of the river Thames or affect its use.

(6) Following an approval of any suspension given by the PLA under this article or determined in accordance with article 60 (arbitration), the PLA must issue a notice to mariners within 12 business days of the approval, giving the commencement date and other particulars of the suspension to which the approval relates, and that suspension will take effect on the date specified and as otherwise described in the notice.

(7) Subject to paragraph (8), an application for approval under this article is deemed to have been refused if it is neither given nor refused within 28 business days of the PLA receiving the application under paragraph (2).

(8) An approval of the PLA under this article is not deemed to have been unreasonably withheld, if approval within the time limited by paragraph (7) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

PART 3

POWERS OF ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Compulsory acquisition of land

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

(2) This article is subject to article 25 (compulsory acquisition of rights), article 26 (acquisition of subsoil or airspace only) and article 32 (temporary use of land for constructing the authorised development).

Time limit for exercise of powers to acquire land compulsorily or to possess land temporarily

24.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act),

in relation to any part of the Order land.

(2) The authority conferred by article 32 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the Company from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

25.—(1) Subject to paragraphs (2) and (3), the Company may acquire such rights over, or impose such restrictive covenants affecting, the Order land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of—

(a) the land shown numbered 02/03 and 04/01 on the land, special category land and crown land plans, the Company's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or other rights over the land, the imposition of restrictive covenants affecting the land or the creation of new rights over the land as the Company may require for or in connection with the authorised development; and

(b) the land shown numbered 06/02 on the land, special category land and crown land plans, the Company's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or other rights over the land held otherwise than by or on behalf of the Crown as the Company may require for or in connection with the authorised development.

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

(4) Schedule 5 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Acquisition of subsoil or airspace only

26.—(1) The Company may acquire compulsorily so much of, or such rights over, the subsoil of and the airspace over the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

(a) Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 30 (modification of Part 1 of the 1965 Act);

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the Company acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

(**a**) As amended by paragraphs 1 and 2 of Schedule 17 to the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
(**b**) As inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016.

Private rights over land

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

(a) from the date of acquisition of the land by the Company, whether compulsorily or by agreement; or

(b) on the date of entry onto the land by the Company under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

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

(a) from the date of the acquisition of the right or the benefit of the restrictive covenant being imposed in favour of the Company, whether compulsorily or by agreement;

(b) on the date of entry onto the land by the Company under section 11(1) of the 1965 Act; or

(c) on the commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

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

(a) any notice given by the Company before—

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

(ii) the Company's appropriation of it;

(iii) the Company's entry onto it; or

(iv) the Company's taking temporary possession of it,

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

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

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

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

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

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

(8) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

28.—(1) Any authorised activity which takes place on land within the Order land (whether the activity is undertaken by the Company or by any person deriving title from the Company or by any contractors, servants or agents of the Company) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article "authorised activity" means—

(a) the erection, construction, operation or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by this Order; or

(c) the use of any land (including the temporary use of land).

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

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the Company by whom the land in question was acquired—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the Company.

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

Rights over or under streets

29.—(1) The Company may enter on, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

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

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

(a) any subway or underground building; or

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

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

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

Modification of Part 1 of the 1965 Act

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

(2) In section 4A(1)(**a**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118(**b**) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Port of Tilbury (Expansion) Order 2019.

(3) In section 11A(**c**) (powers of entry: further notice of entry)—

(a) in subsection (1)(a) after "land" insert "under that provision";

(b) in subsection (2), after "land" insert "under that provision".

(4) 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 24 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Port of Tilbury (Expansion) Order 2019".

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

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

"(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Port of Tilbury (Expansion) Order 2019, which excludes the acquisition of subsoil or airspace only from this Schedule"; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 19 (protective works to buildings), 32 (temporary use of land for constructing the authorised development) or 33 (temporary use of land for maintaining the authorised development) of the Port of Tilbury (Expansion) Order 2019."

Application of the 1981 Act

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

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

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

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

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

(**a**) As inserted by section 202(1) of the Housing and Planning Act 2016.
(**b**) As amended by paragraphs 1, 58 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).
(**c**) As inserted by section 186(3) of the Housing and Planning Act 2016.

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

(6) In section 5B(**b**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 of the Port of Tilbury (Expansion) Order 2019".

(7) In section 6(**c**) (notices after execution of declaration), in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134(**d**) (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(8) In section 7 (constructive notice to treat) in subsection (1)(a), omit the words "(as modified by section 4 of the Acquisition of Land Act 1981)".

(9) In Schedule A1(**e**) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

> "(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Port of Tilbury (Expansion) Order 2019, which excludes the acquisition of subsoil or airspace only from this Schedule."

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 30 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Temporary possession of land

Temporary use of land for constructing the authorised development

32.—(1) The Company may, in connection with the construction of the authorised development but subject to article 24 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily)—

(a) enter on and take temporary possession of—

(i) the land specified in column (1) of Schedule 6 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and

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

(b) remove any buildings and vegetation from the land referred to in sub-paragraph (a);

(c) construct temporary works (including the provision of means of access) and buildings on the land referred to in sub-paragraph (a); and

(d) construct any works on the land referred to in sub-paragraph (a) as are mentioned in Schedule 1 (authorised development).

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

---

(**a**) Inserted by section 182(2) of the Housing and Planning Act 2016.
(**b**) As inserted by section 202(2) of the Housing and Planning Act 2016.
(**c**) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.
(**d**) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and S.I. 2017/16.
(**e**) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.
(**f**) As amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

land and that notice must state the period for which temporary possession will be taken and the works, facilities or other purpose for which the Company intends to take possession of the land.

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

(a) in the case of any land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 6; or

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the works, use of facilities or other purpose for which temporary possession of the land was taken unless the Company has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

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

(a) replace a building removed under this article;

(b) restore the land on which any permanent works have been constructed under paragraph (1)(d);

(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or

(d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The Company 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.

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

(7) Subject to article 40 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

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

(9) Section 13(**a**) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use 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.

Temporary use of land for maintaining the authorised development

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

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

(b) enter on any of the land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(**a**) As amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

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

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

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

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the period for which temporary possession will be taken and the purpose for which the Company intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be taken.

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

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

(6) The Company 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 powers conferred by this article.

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

(8) Subject to article 40 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use 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.

(11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part is first brought into operational use by the Company.

Supplementary

Statutory undertakers

34.—(1) Subject to the provisions of article 25(2) (compulsory acquisition of rights), Schedule 10 (protective provisions) and paragraph (2), the Company may—

(a) exercise the powers conferred by articles 23 (compulsory acquisition of land) and 25 (compulsory acquisition of rights) in relation to so much of the Order land as belongs to statutory undertakers; and

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

(a) Part 3 (street works in England and Wales) of the 1991 Act; or

(b) article 35 (apparatus and rights of statutory utilities in stopped up streets).

Apparatus and rights of statutory utilities in stopped up streets

35.—(1) Where a street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 12 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 Company must—

(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 Company must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

(a) the construction 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 construction of the relocation works.

(4) If in the course of the construction 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 Company, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction 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) is to 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 is not to 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 is to 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)) must, 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) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

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

(b) the allowable costs are to be borne by the Company and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

"relocation works" means work constructed, 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) (interpretation of chapter 1) of the Communications Act 2003(**a**).

Recovery of costs of new connection

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

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 34, any person who is—

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

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

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

(3) This article does not have effect in relation to apparatus to which article 35 (apparatus and rights of statutory utilities in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) (interpretation of chapter 1) of the Communications Act 2003; and

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

Special category land: West Tilbury common land

37.—(1) The Company must not exercise a relevant Order power in respect of the special category land until the Company has acquired the replacement land in the Company's name, or in the name of the persons who owned the special category land on the date this Order came into force.

(2) At the beginning of the day on which a relevant Order power is first exercised by the Company in respect of the special category land—

(a) the replacement land vests in the same persons who owned the special category land on the date this Order came into force (if the replacement land is not already owned by those persons) and becomes subject to the same rights, trusts and incidents as attach to the special category land; and

(b) the special category land is discharged from all rights, trusts and incidents to which it was previously subject.

(3) As soon as reasonably practicable after paragraph (2) takes effect, the Company must apply under section 14 (statutory dispositions) of the Commons Act 2006(**b**) and paragraph 8 of Schedule 4 (applications pursuant to section 14: statutory dispositions) to the Commons

(**a**) 2003 c. 21.
(**b**) 2006 c. 26.

Registration (England) Regulations 2014(**a**) to amend the relevant register of common land accordingly.

(4) In this article—

"relevant Order power" means—

(a) a power contained in Part 2 (works provisions) (but not including article 20 (authority to survey and investigate land));

(b) the service of a notice to treat under the 1965 Act or a notice under section 134 of the 2008 Act pursuant to article 23 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights); or

(c) the entry onto and temporary possession of land under article 32 (temporary use of land for constructing the authorised development);

"the replacement land" means the land numbered 03/04a shown on the land, special category land and crown land plans;

"rights, trusts and incidents" includes all such provisions contained in the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893(**b**) or having effect under that Act; and

"the special category land" means the land identified as forming part of registered common land and numbered 03/08 and 03/11 in the book of reference and shown on the land, special category land and crown land plans.

Compensation

Disregard of certain interests and improvements

38.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

(a) any interest in land; or

(b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the construction of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

Set-off for enhancement in value of retained land

39.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 25 (compulsory acquisition of rights), the tribunal must set off against the value of the rights so acquired—

(a) any increase in the value of the land over which the new rights are required; and

(**a**) S.I. 2014/3038
(**b**) 56 & 57 Vict, c. 102.

(b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

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

PART 4

OPERATIONAL PROVISIONS

Maintenance of the authorised development and operation of the Company's harbour undertaking

41.—(1) The Company may—

(a) maintain the authorised development; and

(b) operate it as part of its harbour undertaking within the extended port limits.

(2) For the purposes of operating its harbour undertaking within the extended port limits, the Company may—

(a) within the extended port limits (other than those parts of the river Thames situated within the extended port limits), construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances;

(b) without limitation on the scope of sub-paragraph (a), within the extended port limits construct, carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the maintenance, operation or use of the Company's harbour undertaking, including—

(i) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and

(ii) landscaping and other works to mitigate any adverse effect of the maintenance, operation or use of the Company's harbour undertaking or to benefit or protect any person or premises affected by the maintenance, operation or use of the Company's harbour undertaking;

(c) within the parts of the river Thames situated within the extended port limits construct and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the maintenance, operation or use of the Company's harbour undertaking, including works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons); and

(d) construct works and carry out development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the maintenance, operation or use of the Company's harbour undertaking.

(3) This article does not authorise any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

Power to appropriate

42.—(1) Regardless of anything in section 6 (public access to port premises) of the 1968 Act or any other enactment, the Company may from time to time set apart and appropriate any part of the authorised development comprised in the extended port limits for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the Company may think fit.

(2) No person or vessel may make use of any part of the authorised development comprised in the extended port limits so set apart or appropriated without the consent of the Company, and the Company Harbour Master may order any person or vessel making use of the authorised development comprised in the extended port limits without such consent to leave or be removed.

Powers to dredge

43.—(1) The Company may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore within any part of the Order limits situated within the river Thames as may be required for the purpose of maintaining and operating the authorised development, but only to the depth shown on the limits of dredging plan.

(2) All materials dredged up or removed by the Company in exercise of the powers of paragraph (1) of this article or under Schedule 1 (authorised development) to this Order (other than wreck within the meaning of Part 9 (salvage and wreck) of the Merchant Shipping Act 1995(**a**)) are to be the property of the Company and may be used, sold, deposited or otherwise disposed of as the Company thinks fit.

(3) No materials dredged under the powers of this Order may be disposed of in the UK marine area except in accordance with an approval from—

(a) the MMO under the deemed marine licence or under any other marine licence granted by the MMO; and

(b) the PLA under Part 3 (for the protection of the Port of London Authority) of Schedule 10, (protective provisions) where such disposal is on the bed of the river Thames.

(4) The exercise of the powers of this article is subject to the requirements of Schedule 10 as to the PLA's approval of dredging proposals and the payment of compensation for dredged material.

(5) In respect of any activities falling within paragraph (1), this Order is deemed to be 'legislation' falling within section 75(3) (exemptions for certain dredging etc. activities) of the 2009 Act.

Power to operate and use railways

44.—(1) The Company, or any person permitted by the Company, may operate and use the railways comprised in the authorised development together with any ancillary works as a system, or part of a system, for the carriage of goods.

(2) The Company may enter into agreements with Network Rail and the Office of Rail and Road in connection with the construction, operation and use of the railways comprised in the authorised development.

Byelaws relating to the extended port limits

45.—(1) The byelaws contained in Schedule 7 (port premises byelaws – the Port of Tilbury (Expansion) Byelaws 2019) have effect in relation to the extended port limits from such date as the Company may determine and for the purposes of section 168 (confirmation of byelaws) of the 1968 Act are to be treated as byelaws made by the Company under section 161 (byelaws for port premises) of the 1968 Act and subsequently confirmed on the date this Order comes into force.

(**a**) 1995 c. 21.

(2) The byelaws contained in Schedule 7 continue to have effect until such time as they are amended or revoked by further byelaws made by the Company under section 161 (byelaws for port premises) of the 1968 Act.

(3) The Company must publish a notice in *The London Gazette* of the date determined under paragraph (1).

(4) Byelaws made under section 161 of the 1968 Act are enforceable by the Company and any authorised officer.

(5) The Company must not make any byelaw under section 161 of the 1968 Act so as to conflict with any byelaw made by the PLA, or with any general direction to vessels given by the PLA or the PLA Harbour Master acting under any enactment.

(6) In the case of conflict between—

(a) a byelaw made by the Company; and

(b) a byelaw made, or direction given, by the PLA or the PLA Harbour Master,

the byelaw or direction of the PLA or of the PLA Harbour Master will prevail.

Fixed penalty notices

46.—(1) This article applies where it appears to an authorised officer that a person has committed an offence under byelaws made under section 161 of the 1968 Act.

(2) The authorised officer may serve on that person a fixed penalty notice in respect of the offence.

(3) Where a person is given a fixed penalty notice under this article in respect of an offence —

(a) no proceedings may be instituted for that offence before the expiration of 14 days after the date of the notice; and

(b) that person may not be convicted of the offence if the fixed penalty is paid before the expiration of 14 days after the date of the notice.

(4) A fixed penalty notice must state—

(a) the amount of the fixed penalty;

(b) particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence;

(c) the time by which and the manner (including the number to be used for payments by credit or debit card) in which the fixed penalty must be paid; and

(d) that proceedings may be instituted if payment is not made within the time specified in the fixed penalty notice.

(5) The amount of the fixed penalty is—

(a) one fifth of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction provided that person pays the fixed penalty in full within 7 days of issue of the fixed penalty notice; or

(b) one half of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction.

(6) An authorised officer may require a person to whom this article applies to pay a deposit of one tenth of the maximum amount of the fine to which a person may be liable under level 3 on the standard scale on accepting a fixed penalty notice if that person fails to provide, when requested, a residential address in the United Kingdom.

(7) Payment of the deposit must be made—

(a) in person to the authorised officer by cash, credit or debit card, if the authorised officer has the necessary means to accept payment in that manner;

(b) by telephone by credit or debit card to the number stipulated in the fixed penalty notice for making payments; or

(c) by App.

(8) The Company must apply the deposit towards payment of the fixed penalty.

(9) In any proceedings a certificate which—

(a) purports to be signed on behalf of the chief finance officer of the Company; and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(10) In this article—

"App" means a software application for use on an electronic device which provides for payment by credit or debit card and which is provided by the Company for that purpose;

"credit card" means a card or similar thing issued to any person, use of which enables the holder to defer payment of the deposit;

"debit card" means a card or similar thing issued by any person, use of which causes the deposit to be paid by the electronic transfer of funds from any current account of the holder at a bank or other institution providing banking facilities; and

"fixed penalty notice" means a notice offering the opportunity of the discharge of liability to conviction of an offence under byelaws made under section 161 of the 1968 Act.

Planning legislation

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

(2) It does not constitute a breach of the terms of this Order if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits in accordance with any planning permission granted under the 1990 Act (including a planning permission granted under article 3 (permitted development) and Class B (dock, pier, harbour, water transport, canal or inland navigation undertakings) of Part 8 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(**a**)).

Application of landlord and tenant law

48.—(1) This article applies to any agreement entered into by the Company under article 51 (consent to transfer of benefit of Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

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

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

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

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

(**a**) S.I. 2015/596.

Defence to proceedings in respect of statutory nuisance

49.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(**a**) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to 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 Company for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the 1974 Act;

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

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

PART 5

MISCELLANEOUS AND GENERAL

Benefit of Order

50. Subject to article 51 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the Company.

Consent to transfer benefit of Order

51.—(1) Subject to the provisions of this Order the Company may, with the written consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (including the deemed marine licence) and such related rights as may be agreed between the Company and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the Company and the lessee any or all of the benefit of the provisions of this Order (including the deemed marine licence) and such related rights as may be so agreed.

(2) The powers conferred by paragraph (1)(a) may only be exercised by the Company or a transferee.

(3) A lessee ('the granting lessee') may not make a grant under paragraph (1)(b)—

(a) for a longer period than the period of the grant to the granting lessee; or

(b) conferring any benefit or right that is not conferred by the grant to the granting lessee.

(4) Where an agreement has been made in accordance with paragraph (1), references in this Order to the Company, except in paragraphs (2) and (5), include references to the transferee or the lessee.

(**a**) 1990 c. 43; there are amendments that are not relevant to this Order.

(5) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the Company.

(6) Before giving consent under this article, the Secretary of State must consult the PLA, National Grid, Cadent and such other parties as the Secretary of State considers appropriate.

(7) The Company must, within 10 business days after entering into an agreement under paragraph (1) in relation to which any of the benefit of the deemed marine licence is transferred to another party, notify the PLA, the Environment Agency and the MMO in writing, and the notice must include particulars of the other party to the agreement under paragraph (1) and details of the extent, nature and scope of the functions transferred or otherwise dealt with which relate to the functions of any of those bodies.

Traffic regulation measures

52.—(1) Subject to the provisions of this article, the Company may, for the purposes of the authorised development—

(a) make provision, in respect of those roads specified in column (1) of Part 1 of Schedule 8 (traffic regulation measures, etc.), as to the speed limits of those roads as specified in column (2) of that Part of that Schedule;

(b) make provision, in respect of those roads specified in column (1) of Part 2 of Schedule 8, as to the clearway status of, and the application of other prohibitions to, those roads as specified in column (2) of that Part of that Schedule;

(c) in respect of the road specified in column (1) of Part 3 of Schedule 8, revoke the order specified in column (2) of Part 3 of Schedule 8; and

(d) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the Company under this paragraph.

(2) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**a**) when used in accordance with regulation 3(5) of those regulations.

(3) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the Company may, in so far as necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the direction or priority of vehicular traffic on any road; and

(e) permit or prohibit vehicular access to any road,

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

(4) The power conferred by paragraph (3) may be exercised at any time prior to the expiry of 24 months from the opening of Work No. 3 for operational use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (3) may have effect both before and after the expiry of that period.

(**a**) S.I.2011/935.

(5) The Company must not exercise the powers conferred by paragraph (1) or (3) unless the Company has—

(a) given not less than—

(i) 12 weeks' notice in writing of the Company's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of the Company's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated and that notice must include the time periods within which the traffic authority may specify the manner in which, under sub-paragraph (b), the Company must advertise its intention to exercise the powers conferred by paragraph (1) or (3); and

(b) advertised the Company's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the Company's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the Company's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the Company under paragraph (1) or (3)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject;

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act; and

(c) must be advertised in the same manner as the Company's intention to make the prohibition, restriction or other provision was under paragraph (5)(b).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the Company from time to time by subsequent exercise of the powers conferred by paragraph (1) or (3) within a period of 24 months from the opening of the authorised development for operational use.

(8) Before exercising the powers conferred by paragraphs (1) or (3) the Company must consult such persons as the Company considers necessary and appropriate and have regard to the representations made to the Company by any such person.

(9) An order made under paragraph (3)(a) may be varied or revoked by an order made by the highway authority under the 1984 Act.

(10) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

Deemed marine licence

53. The Company is granted a deemed marine licence under Part 4 (marine licensing) of the 2009 Act to carry out the activities specified in Part 1 of Schedule 9 (deemed marine licence), subject to the licence conditions set out in Part 2 of that Schedule.

Protective provisions

54. Schedule 10 (protective provisions) has effect.

Saving for Trinity House

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

Crown Rights

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

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

(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

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

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

Consents, agreements, certifications and approvals

57.—(1) Where any application is made to a relevant authority, the consent, agreement, certification or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application fails to notify the Company of its decision before the end of the period of 28 days beginning with the date on which the application was received, the relevant authority is deemed to have given its consent, agreement, certification or approval, as the case may be.

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

(4) If before this Order comes into force the Company or any other person has taken any step in relation to an application to which this article applies, that step may be taken into account to determine whether the consent, agreement, certification or approval concerned should be granted provided that step would have been a valid step for the purpose of the application if it had been taken after this Order came into force.

(5) Where any application is made to a relevant authority and the application includes submissions relating to the discharge of an obligation under Part 3 of Schedule 10 (protective provisions) at the same time, paragraph (2) does not apply to that application.

(6) In this article—

"application" means an application or request for any consent, agreement, certification or approval required or contemplated by articles 8 (street works), 10 (construction and maintenance of new, altered or diverted streets), 13 (temporary stopping up and restriction of use of streets), 14 (access to works), 18 (discharge of water), 20 (authority to survey and investigate land) and 52 (traffic regulation measures); and

"relevant authority" means the owner of a watercourse, public sewer or drain, a local authority, a traffic authority, a highway authority or a street authority.

Certification of documents

58.—(1) As soon as practicable after the making of this Order, the Company must submit copies of each of the plans and documents set out in Schedule 11 (documents to be certified) to the Secretary of State for certification that they are true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 11 requires to be amended to reflect the terms of the Secretary of State's decision to make this Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the document required to be submitted for certification under paragraph (1).

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

(4) The Company must, following certification of the plans and documents in accordance with paragraph (1), make those plans and documents available in electronic form for inspection by members of the public.

Service of notices

59.—(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 (5) 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 (references to service by post) 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 a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

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

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(**a**) 1978 c. 30.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is 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 must not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

60. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Natasha Kopala
Head of the Transport and Works Act Orders Unit
Department for Transport

20th February 2019

SCHEDULES

SCHEDULE 1

Articles 2 and 7

AUTHORISED DEVELOPMENT

In the area of Thurrock Council and within the Order limits—

Nationally Significant Infrastructure Project

Work No. 1 – as shown on sheet 3 of the works plans being the construction of a Roll on Roll off berth on the river Thames comprising—

(a) the construction of dolphins in the river bed with associated fenders and walkways;

(b) the construction of a floating pontoon with associated restraint structures;

(c) the construction of structures and buildings on the floating pontoon;

(d) the construction of an approach bridge with abutments, with a roadway, footway and wind barrier on the surface of the bridge;

(e) the construction of a linkspan bridge between the floating pontoon and the approach bridge, with a roadway, footway and wind barrier on the surface of the bridge;

(f) the construction of a surface water outfall;

(g) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;

(h) the alteration and renewal of an existing flood defence;

(i) the removal of the existing jetty known as the Anglian Water jetty and its associated structures;

(j) related dredging works within the river Thames for the above; and

(k) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames.

Work No. 2 – as shown on sheet 3 of the works plans being the construction of a Construction Materials and Aggregates Terminal (CMAT) berth on the river Thames comprising—

(a) the construction of dolphins in the river bed with associated fenders and walkways;

(b) the construction of a conveyor hopper and supporting structures on the river bed;

(c) the installation of pipework on the existing river jetty and connections to Work No. 8A;

(d) the construction of a conveyor and supporting structures in the river bed;

(e) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;

(f) related dredging works within the river Thames for the above; and

(g) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames.

Associated Development

Work No. 3 – as shown on sheets 2 and 3 of the works plans being the construction of a Roll on Roll off terminal comprising—

(a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;

(b) the construction of rail sidings and associated rail infrastructure;

(c) the laying out of vehicular, cyclist and pedestrian roads and routes including a connection to Work No. 1(d);

(d) the construction of ancillary buildings, including staff welfare and operational facilities;

(e) the construction of site lighting infrastructure, including lighting columns;

(f) the demolition of existing buildings; and

(g) the installation of above ground and underground drainage infrastructure, including a pumping station.

Work No. 4 – as shown on sheets 1 and 2 of the works plans and being the construction and laying out of vehicular, cyclist and pedestrian roads and routes for the Roll on Roll off terminal and the construction materials and aggregates terminal comprising—

(a) the demolition of existing buildings;

(b) the construction of private means of accesses to land;

(c) the construction of a gatehouse and associated infrastructure; and

(d) the construction of a 3 metre high noise barrier.

Work No. 5 – as shown on sheet 2 of the works plans and being the construction of an operational compound for the Roll on Roll off terminal and the CMAT comprising—

(a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;

(b) the construction of car parking facilities;

(c) the construction of ancillary buildings including staff welfare facilities; and

(d) the demolition of existing buildings.

Work No. 6 – as shown on sheets 1 and 2 of the works plans and being the construction and laying out of storage areas comprising—

(a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works; and

(b) the construction of a railway line and associated railway infrastructure.

Work No. 7 – as shown on drawing sheet 3 of the works plans being the construction of a warehouse comprising—

(a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;

(b) the construction of a warehouse;

(c) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of Work No. 3 overlaps with the location of this Work No. 7);

(d) the laying out of vehicular, cycling and pedestrian roads and routes; and

(e) the construction of site lighting infrastructure, including lighting columns.

Work No. 8 – as shown on drawings sheets 2 and 3 of the works plans being the construction of a construction materials aggregates terminal comprising—

(a) Work No. 8A—

(i) the construction of silo facilities and associated piping and pumping infrastructure and road tanker loading facilities;

(ii) the construction of weighbridges;

(iii) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of Work No. 3 overlaps with the location of this Work No. 8A);

(iv) the construction and laying out of vehicular roads and routes; and

(v) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;

(b) Work No. 8B—

(i) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;

(ii) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of Work No. 3 overlaps with the location of this Work No. 8B);

(iii) the construction of site lighting infrastructure, including lighting columns;

(iv) the construction of a conveyor and supporting structures; and

(v) the construction and laying out of vehicular roads and routes;

(c) Work No. 8C—

(i) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;

(ii) the construction of an aggregate storage yard;

(iii) the construction of a railway line, rail sidings and associated rail infrastructure;

(iv) the construction of a conveying system and supporting structures; and

(v) the construction and laying out of vehicular and pedestrian access routes and roads; and

(d) Work No. 8D—

(i) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;

(ii) the construction of an aggregate storage yard;

(iii) the construction of construction materials and aggregate processing facilities including associated buildings and infrastructure;

(iv) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of Work No. 8C overlaps with the location of this Work No. 8D); and

(v) the construction and laying out of vehicular and pedestrian access routes and roads.

Work No. 9 – as shown on sheet 1 of the works plans being the construction of a new highway from Ferry Road to a point 190 metres south-west of the centrepoint of the existing Fort Road bridge over the London to Tilbury railway line comprising—

(a) Work No. 9A—

(i) the construction of a new single lane two way highway 1250 metres in length from a point on St Andrew's Road 1460 metres from the centrepoint of the Asda Roundabout to a point 190 metres southwest of the centrepoint of the existing Fort Road bridge over the London to Tilbury railway line;

(ii) the construction of a new junction with a new highway as shown on sheet 2 of the rights of way and access plans at a point 1700 metres southeast of the centre point of the existing Asda roundabout constructed pursuant to Work No. 9B;

(iii) the construction of a new junction with a new highway as shown on sheet 1 of the rights of way and access plans at a point 275 metres southwest of the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line constructed pursuant to Work No. 9C;

(iv) the improvement of the existing highway known as St Andrew's Road for a length of 150 metres;

(v) the construction of a 3 metre high noise barrier;

(vi) the construction of private means of accesses to land as shown for illustrative purposes on sheet 2 of the rights of way and access plans;

(vii) the construction of a footway and cycleway;

(viii) the demolition of existing buildings;

(ix) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse; and

(x) works to alter the position of apparatus, including mains, sewers, drains and cables;

(b) Work No. 9B—

(i) the construction of a new highway 165 metres in length from a junction with St Andrew's Road at a point 1825 metres southeast of the centre point of the roundabout known as the Asda roundabout to a point 1700 metres southeast of the centre point of the roundabout known as the Asda roundabout; and

(ii) the construction of a cycleway; and

(c) Work No. 9C—

(i) the construction of a new highway 100 metres in length from a point on the existing Fort Road 290 metres south-southwest of the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line to a point on the existing Fort Road, 280 metres southwest of the centrepoint of the existing bridge that carries Fort Road over the London to Tilbury railway line;

(ii) the construction of a new junction with Fort Road as shown on sheet 1 of the works plans at a point 290 metres south-southwest of the centrepoint of the existing bridge that carries Fort Road over the London to Tilbury railway line;

(iii) the construction of a private means of access to land as shown for illustrative purposes on sheet 2 of the rights of way and access plans; and

(iv) the construction of a cycleway.

Work No. 10 – as shown on sheet 1 of the works plans being the construction of a road overbridge at Fort Road comprising—

(a) the construction of a new bridge over new highway and new railway (Work No. 9A and Work No. 12) tying into the existing bridge over the London to Tilbury railway line;

(b) the construction of a new length of highway of 330 metres in length, from a point 330 metres south-southeast of the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line to the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line;

(c) the construction of a cycleway;

(d) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;

(e) works to alter the position of apparatus, including mains, sewers, drains and cables; and

(f) the improvement of existing highway known as Fort Road including markings to indicate a mini-roundabout.

Work No. 11 – as shown on sheet 1 of the works plans being the improvement of a highway known as the Asda Roundabout.

Work No. 12 – as shown on sheet 1 of the works plans being the construction of a rail line from a point 95 metres southeast of the existing connection of the rail sidings known as the Riverside Sidings to the London to Tilbury railway line to a point 35 metres south of the centrepoint of the existing Fort Road bridge over the London to Tilbury railway line comprising—

(a) the construction of a railway line, passing loop and associated rail infrastructure of 1325 metres in length from the existing siding off of the London to Tilbury railway line to Work No. 6;

(b) the construction of a 1.5 metre high noise barrier;

(c) the construction of private means of accesses to land;

(d) the demolition of existing buildings;

(e) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse; and

(f) works to alter the position of apparatus, including mains, sewers, drains and cables.

Ancillary Works

For the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development which does not give rise to any significant adverse effects that have not been assessed in the environmental statement, being development consisting of—

(a) works within highways, comprising—

(i) alteration of the layout of any street permanently or temporarily, including increasing the width of the carriageway of any street by reducing the width of any kerb, footway, cycleway, or verge within the street; and altering the level or increasing the width of any such kerb, footway, cycleway or verge within the street, works for the strengthening, improvement, repair, maintenance or reconstruction of any street;

(ii) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;

(iii) relocation or provision of new road traffic signs, signals, street lighting and carriageway lane markings; and

(iv) works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments;

(b) works within the river Thames situated within the Order limits to—

(i) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including river walls);

(ii) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;

(iii) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(**a**)) obtained in carrying out any such operations;

(iv) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);

(v) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the river; and

(vi) construct, place and maintain works and structures including piled fenders, protection piles and cofferdams; and

(c) other works and development—

(i) for the strengthening, alteration or demolition of any building;

(ii) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights, cofferdams, fencing and other boundary treatments including bollards and security cameras;

(**a**) 1995 c. 21.

(iii) ramps, steps, footpaths, footways, cycle tracks, cycleways, bridleways, equestrian tracks, non-motorised user routes or links, byways open to all traffic and crossing facilities;

(iv) embankments, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, highway lighting and fencing;

(v) settlement mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;

(vi) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses;

(vii) landscaping, noise barriers, works associated with the provision of ecological mitigation, and other works to mitigate any adverse effects of the construction, operation or maintenance of the authorised development;

(viii) areas of hard or soft landscaping works, or public realm, at various locations adjacent to the proposed highway and associated works;

(ix) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, works of demolition, including demolition of existing structures, and the creation of alternative highways or footpaths) and earthworks (including soil stripping and storage and site levelling);

(x) construction compounds and working sites, temporary structures, storage areas (including storage of spoil and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;

(xi) service compounds, plant and equipment rooms, offices, staff mess rooms, welfare facilities, and other ancillary and administrative accommodation;

(xii) for the benefit or protection of the authorised development;

(xiii) within the Order limits (other than the parts of the river Thames situated within the extended port limits) roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient; and

(xiv) of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction of the authorised development.

SCHEDULE 2

Article 6

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Part of this Schedule—

"AOD" means above ordnance datum (Newlyn);

"the bird monitoring and action plan" means the document of that description in Schedule 11 (documents to be certified) certified by the Secretary of State as the bird monitoring and action plan for the purposes of this Order;

"the construction environmental management plan" means the document of that description in Schedule 11 certified by the Secretary of State as the construction environmental management plan for the purposes of this Order;

"the drainage strategy" means the drainage strategy contained in appendix 16.E of the environmental statement;

"the ecological mitigation and compensation plan" means the document of that description set out in Schedule 11 certified by Secretary of State as the ecological mitigation and compensation plan for the purposes of this Order;

"the flood risk assessments" means the level 2 flood risk assessment, the level 3 flood risk assessment and the level 3 flood risk assessment addendum;

"the level 2 flood risk assessment" means the level 2 flood risk assessment contained in appendix 16.A of the environmental statement;

"the level 3 flood risk assessment" means the level 3 flood risk assessment contained in appendix 16.B of the environmental statement;

"the level 3 flood risk assessment addendum" means the document of that description set out in Schedule 11 certified by the Secretary of State as the level 3 flood risk assessment addendum for the purposes of this Order;

"the framework travel plan" means the framework travel plan contained in document reference v2 [PoTLL/T2/EX/140], appendix 13.B of the environmental statement;

"the landscape and ecological management plan" means the landscape and ecological management plan contained in document reference v3 [PoTLL/T2/EX/177], appendix 10.P of the environmental statement;

"the navigational risk assessment" means the navigational risk assessment contained in appendix 14.A of the environmental statement;

"the operational community engagement plan" means the document of that description set out in Schedule 11 certified by the Secretary of State as the operational community engagement plan for the purposes of this Order;

"the operational management plan" means the document of that description set out in Schedule 11 certified by the Secretary of State as the operational management plan for the purposes of this Order;

"the preliminary lighting strategy and impact assessment" means the preliminary lighting strategy and impact assessment contained in appendix 9.J of the environmental statement;

"the requirement 3 colour palette" means the document of that description set out in Schedule 11 certified by the Secretary of State as the requirement 3 colour palette for the purposes of this Order;

"the sustainable distribution plan" means the sustainable distribution plan contained in document reference v2 [PoTLL/T2/EX/142], appendix 13.C of the environmental statement; and

"the terrestrial written scheme of investigation" means the written scheme of investigation for terrestrial archaeological mitigation contained in document reference v3 [PoTLL/T2/EX/104], appendix 12.D of the environmental statement.

Time limit for commencement of the authorised development

2. The authorised development must commence within 5 years of the date on which this Order comes into force.

External appearance and height of the authorised development

3.—(1) Construction of—

(a) the proposed ancillary buildings constructed as part of Work No 3(d);

(b) the proposed ancillary buildings constructed as part of Work No. 5(c);

(c) the proposed warehouse constructed as part of Work No. 7(b);

(d) any silo facilities constructed as part of Work No. 8A(i);

(e) any processing facilities constructed as part of Work No. 8D(iii); and

(f) any fencing constructed as part of Work Nos. 9 or 12,

must not commence until the details of the external materials to be used in the construction of those works have been submitted to and approved in writing by the relevant planning authority, in consultation with Historic England and Gravesham Borough Council.

(2) All structures constructed as part of the authorised development apart from those listed in sub-paragraph (1) must be constructed in accordance with the requirement 3 colour palette.

(3) The authorised development must be carried out in accordance with details approved by the relevant planning authority under sub-paragraph (1).

(4) The diameter of Work No. 8A(i) must not exceed 15 metres.

(5) The height of the—

(a) elements of the authorised development; or

(b) aspect of operation of the authorised development,

set out in column (1) of the below table must not exceed the maximum height set out in column (2)—

Building, structure or operation *(1)*	*Maximum height (AOD)* *(2)*
Buildings constructed as part of Work No. 3(d)	12 metres
Buildings constructed as part of Work 5(c)	12 metres
Processing facilities constructed as part of Work No. 8D	34 metres
Silo facilities constructed as part of Work No. 8A(i)	104 metres
The warehouse constructed as part of Work No. 7(b)	Eaves height: 22 metres Ridge height: 26 metres
The storage of containers within Work No. 3	22 metres
The stockpiling of material within the limits of deviation shown on the works plans of Work No. 6	9 metres
The stockpiling of material within the limits of deviation shown on the works plans of Work No. 8	21 metres

Construction environmental management plan

4. The authorised development must be constructed in accordance with the construction environmental management plan.

Off-site mitigation

5.—(1) No part of the authorised development may be commenced until a final version of each of—

(a) a Wildlife and Countryside Act 1981(**a**) and Conservation of Habitats and Species Regulations 2017(**b**) licence method statement for the loss of bat roosts;

(b) a Wildlife and Countryside Act 1981 licence method statement for water vole translocations; and

(c) a Protection of Badgers Act 1992(**c**) licence method statement for badger sett interference,

have been approved by Natural England, and a final version of a reptile translocation method statement has been approved by the relevant planning authority.

(2) Each of the method statements listed in sub-paragraph (1) is to be considered to form part of the ecological mitigation and compensation plan once it has been approved by Natural England or the relevant planning authority (as appropriate).

(3) The authorised development must be constructed and maintained in accordance with the ecological mitigation and compensation plan (including the method statements approved under sub-paragraph (1)).

Terrestrial written scheme of archaeological investigation

6. The authorised development must be constructed in accordance with the terrestrial written scheme of investigation.

Highway works

7.—(1) Work Nos. 3 and 8 must not be opened for use until—

(a) Work Nos. 9A, 9B and 11 have been completed and are available for use by the public; and

(b) the Company has entered into an agreement with Highways England under article 15(1) for the carrying out by Highways England of a package of alterations to the existing road marking on the A13 westbound and A282 northbound approaches to Junction 30 of the M25.

(2) The design of the package of road marking alterations mentioned in sub-paragraph (1)(b) must be in accordance with the Design Manual for Roads and Bridges (or any replacement or modification of it) and generally in accordance with the in-principle design of those alterations agreed between the Company and Highways England during the examination of the application for this Order.

(3) The agreement mentioned in sub-paragraph (1)(b) must include arrangements for the Company to—

(i) pay the costs reasonably and properly incurred by Highways England in implementing the road marking alterations mentioned in sub-paragraph (1)(b), up to a limit of £50,000 plus any VAT payable; and

---

(**a**) 1981 c. 69
(**b**) S.I. 2017/1012
(**c**) 1992 c. 51

(ii) pay to Highways England a commuted sum that represents the increased maintenance costs, if any, that will be incurred as a result of carrying out those road marking alterations, to be calculated in accordance with FS Guidance s.278 Commuted Lump Sum Calculation Method dated 18th January 2010 (or any replacement of it) as modified to reflect reasonable contractual payments due to be paid by Highways England to the highway management contractor.

Flood risk assessment

8. The authorised development must be constructed and operated in accordance with the flood risk assessments.

Noise mitigation (noise barriers)

9.—(1) Work No. 4 must not be opened for operational use until the noise barrier to be constructed in accordance with Work No. 4(d) has been constructed.

(2) Work No. 9A must not be opened for public use until the noise barrier to be constructed in accordance with Work No. 9A(v) has been constructed.

(3) Work No. 12 must not be opened for operational use until the noise barrier to be constructed in accordance with Work No. 12(b) has been constructed.

Operational noise monitoring and mitigation (receptors)

10.—(1) Prior to the commencement of first operational use of any of Work Nos. 1 to 8 inclusive the Company must—

(a) carry out a re-assessment of the predicted noise impacts arising from the finalised detail design of those works and the operational procedures to be implemented for them; and

(b) provide the results of the re-assessment to the relevant planning authority and Gravesham Borough Council.

Initial noise insulation

(2) Following the re-assessment carried out under sub-paragraph (1), if external noise arising from the operation of Work Nos. 1 to 8 is predicted to be above the Significant Observed Adverse Effect Level (SOAEL) set out in the table below at any noise sensitive receptor, the Company must offer the owner and occupier of that receptor a package of mitigation.

Time period	*SOAEL (free-field LAeq,T)*
Daytime (07.00 to 23.00)	55dB(A)
Nightime (23.00 to 07.00)	55dB(A)

(3) The package of mitigation to be offered in accordance with sub-paragraph (2) must include at the noise sensitive receptor concerned the installation of triple glazing, or another form of noise insulation or ventilation, whose effect is predicted to be an improvement in the overall noise insulation of the receptor by a margin that is not less than the amount by which the external noise level is predicted to exceed the SOAEL set out in sub-paragraph (2).

(4) The Company is not required to make a mitigation offer under sub-paragraph (2) in respect of any noise sensitive receptor if the receptor's existing noise insulation, glazing or ventilation is sufficient to ensure that significant health effects arising from noise attributable to operation of Work Nos. 1 to 8 are predicted not to occur within the habitable rooms at the receptor.

(5) If the package of mitigation offered in accordance with sub-paragraph (2) is agreed in writing by the owner and occupier of the receptor within the period specified in the offer, which must not be less than thirty days starting with the day after the offer has been received by the owner and occupier, then the package of mitigation must be implemented at the Company's cost prior to the commencement of first operational use of any of Work Nos. 1 to 8.

Ongoing noise monitoring and mitigation scheme

(6) No part of Work Nos. 1 to 8 must be brought into operational use until a written noise monitoring and mitigation scheme for the operation of those works based on the final detailed design of those works and the operational procedures to be implemented for them has been submitted to and agreed in writing with the relevant planning authority and Gravesham Borough Council and has been implemented in accordance with the terms of the scheme.

(7) A scheme agreed under sub-paragraph (6) must, as a minimum, include provision for the following matters—

(a) the nature, location and temporal length of monitoring including (without limitation) provision as to how noise levels recorded at monitoring locations will be attributed to Work Nos. 1 to 8 rather than background noise;

(b) provision for variation of the scheme if the design or operational procedures for Work Nos 1 to 8 change from the date of the start of operational use of those works;

(c) a trigger point comprising noise levels attributable to and during operation of Work Nos. 1 to 8 at which the Company will be required to make an offer of mitigation to an affected noise sensitive receptor during the period of the monitoring, which at a minimum must be no higher than the SOAEL set out in sub-paragraph (2), except where the existing noise insulation, glazing or ventilation at the receptor is sufficient to ensure that significant health effects arising from noise attributable to operation of Work Nos. 1 to 8 are predicted not to occur within the habitable rooms at the receptor; and

(d) that any mitigation offered to an affected noise sensitive receptor must include the offer of the installation of triple glazing or another form of noise insulation or ventilation at that noise sensitive receptor, the effect of which is predicted to be an improvement in the overall noise insulation of the receptor by a margin that is not less than the amount by which the external noise level is predicted to exceed the SOAEL set out in sub-paragraph (2), except where the existing noise insulation, glazing or ventilation at the receptor is sufficient to ensure that significant health effects arising from noise attributable to operation of Work Nos. 1 to 8 are predicted not to occur within the habitable rooms at the receptor.

(8) For the purposes of this paragraph "noise sensitive receptor" means—

(a) any habitable room within a building or part of a building used for residential purposes; and

(b) any proposed habitable room within such a building or part of a building for which there is an extant planning permission under the 1990 Act that is capable of being implemented.

Construction and operational plans and documents

11. The authorised development must be constructed and operated in accordance with the following documents—

(a) the bird monitoring and action plan;

(b) the construction environmental management plan;

(c) the drainage strategy;

(d) the ecological mitigation and compensation plan;

(e) the framework travel plan;

(f) the landscape and ecological management plan;

(g) the navigational risk assessment;

(h) the operational management plan;

(i) the operational community engagement plan; and

(j) the sustainable distribution plan.

Lighting Strategy

12.—(1) No part of the authorised development may be brought into operational use until a written scheme of the proposed operational lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the relevant planning authority, in consultation with Historic England and Gravesham Borough Council.

(2) The written scheme submitted under sub-paragraph (1) must be in general accordance with the preliminary lighting strategy and impact assessment.

(3) The authorised development must be operated in accordance with the scheme approved under sub-paragraph (1).

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

13. In this Part of this Schedule, "discharging authority" means—

(a) any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or

(b) the local authority in the exercise of its functions set out in sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the 1974 Act(**a**).

Applications made under requirements

14.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the Company of its decision on the application within a period of 8 weeks beginning with—

(a) the day immediately following that on which the application is received by the discharging authority; or

(b) where further information is requested under paragraph 15, the day immediately following that on which the further information has been supplied by the Company,

or such longer period as may be agreed in writing by the Company and the discharging authority.

(2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the discharging authority may—

(a) give or refuse its consent, agreement or approval; or

(b) give its consent, agreement or approval subject to reasonable conditions,

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

(**a**) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), Schedule 15 to the Environmental Protection Act 1990 (c. 43) and Schedule 24 to the Environment Act 1995 (c. 25). There are other amendments to section 61 but none are relevant.

Further information regarding requirements

15.—(1) In relation to any application referred to in paragraph 14, the discharging authority may request such further information from the Company as it considers necessary to enable it to consider the application.

(2) If the discharging authority considers that further information is necessary and the requirement concerned contained in Part 1 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within 10 business days of receipt of the application, notify the Company in writing specifying the further information required.

(3) If the requirement concerned contained in Part 1 of this Schedule specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within five business days of receipt of the application, and notify the Company in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the discharging authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the Company.

Appeals

16.—(1) Where a person ("the applicant") makes an application to a discharging authority, the applicant may appeal to the Secretary of State in the event that—

(a) the discharging authority refuses an application for any consent, agreement or approval required by—

(i) a requirement contained in Part 1 of this Schedule; or

(ii) a document referred to in any requirement contained in Part 1 of this Schedule;

(b) the discharging authority does not determine such an application within the time period set out in paragraph 14(1), or grants it subject to conditions;

(c) the discharging authority issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;

(d) on receipt of a request for further information pursuant to paragraph 15 of this Part of this Schedule, the applicant considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

(e) on receipt of any further information requested, the discharging authority notifies the applicant that the information provided is inadequate and requests additional information which the applicant considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

(a) any appeal by the applicant must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 14(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the applicant must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any consultee specified under the relevant requirement contained in Part 1 of this Schedule;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;

(d) the discharging authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect

of the appeal within 10 business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;

(e) the applicant must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to sub-paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the 10 day period for counter-submissions under sub-paragraph (e).

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

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. 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 10 business days of the date specified by the appointed person but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

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

(a) allow or dismiss the appeal; or

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

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

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

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

(9) The decision of the appointed person on an appeal is 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 a judicial review.

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

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

(12) On application by the discharging authority or the applicant, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal

are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.

Amendments to approved details

17.—(1) With respect to the parameters specified in paragraph 3(5), the documents specified in paragraphs 4 , 5, 6, 8, 10, 11 and 12 and any other plans, details or schemes or other documents which require approval by the relevant planning authority pursuant to any provision of Part 1 of this Schedule ("the approved plans, parameters, details or schemes"), the Company may submit to the relevant planning authority for approval any amendments to or replacements of the approved plans, parameters, details or schemes and following any such approval by the relevant planning authority the approved plans, parameters, details or schemes are to be taken to include the amendments or replacements approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) for amendments or replacements to the parameters identified in paragraph 3(5) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any significant adverse effects that have not been assessed in the environmental statement.

Anticipatory steps towards compliance with any requirement

18. If before this Order comes into force the Company or any other person has taken any step in compliance with any requirement in Part 1 of this Schedule, that step may be taken into account to determine compliance with that requirement provided that step would have been a valid step for the purpose of the requirement if it has been taken after this Order came into force.

SCHEDULE 3

Article 11

CLASSIFICATION OF ROADS, ETC.

In the administrative area of Thurrock Council—

A1089 St Andrew's Road classified road

1. A 1080 metres of length of new highway to be classified as part of the A1089 St Andrew's Road—

(a) commencing from a point 216 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge continuing for 94 metres in a east southeast direction to its junction with the proposed classified un-numbered Ferry Road to be constructed;

(b) then continuing in an easterly, then north-easterly direction for a distance of 902 metres to a junction with the proposed classified un-numbered Link Road to be constructed; and

(c) then continuing in a north-easterly direction for 84 metres to a point 189 metres west-south-west of the centre point of the bridge where the existing highway known as un-classified Fort Road passes over the existing railway line known as the London to Tilbury line,

and existing highway, identified in sub-paragraphs (d) and (e), to be reclassified as part of the A1089 St Andrew's Road to include—

(d) 914 metres of the existing highway known as classified un-numbered St Andrew's Road as the A1089 St Andrew's Road, commencing 914 metres northwest from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge; to the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge; and

(e) 216 metres of the existing highway known as classified un-numbered Ferry Road as the A1089 St Andrew's Road, commencing from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 216 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge,

identified by a blue line on the classification of roads plans.

Classified un-numbered Ferry Road

2. A 170 metres length of new highway to be classified as the classified un-numbered Ferry Road commencing from a point at its junction with the proposed A1089 St Andrew's Road, 423 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout and continuing in a southerly direction for 170 metres to the centre point of the existing highway known as classified un-numbered Ferry Road 256 metres north-north-east of the centre point of the existing Riverside Rail Freight Terminal roundabout, identified by an orange line on the classification of roads plans.

Declassification of classified un-numbered Ferry Road

3. The declassification of 172 metres of the existing highway known as classified un-numbered Ferry Road commencing at a point 215 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge continuing in a south easterly direction to a point 375 metres south-south-east from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge, identified by a yellow line on the classification of roads plans.

Classified un-numbered link road

4. A length of 96 metres of new highway commencing from a junction with the proposed highway to be classified as A1089 St Andrew's Road to be constructed at a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line and continuing in a south-easterly direction to a junction with the proposed improved highway known as unclassified Fort Road at a point 287 metres south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury (line, identified by a purple line on the classification of roads plans.

SCHEDULE 4

Articles 10 and 12

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS

PART 1

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

(1) *Area*	*(2)* *Highway to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New highway to be substituted/provided*
The rights of way and access plans – sheet 2			
In the administrative area of Thurrock Council	-	-	Reference A A length of new highway from a point 45 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge running in a north-easterly then easterly direction to a point 273 metres west-southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.
	-	-	Reference B A length of new highway from a point 423 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout running in a south-westerly direction to a point 256 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout.

(1) *Area*	*(2)* *Highway to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New highway to be substituted/provided*
	-	-	Reference C A length of new highway from a point 273 metres west-southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line and running in a south-easterly direction to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.
	-	-	Reference D A length of new highway from a point 11 metres south-southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line running in a southwest direction to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.
The rights of way and access plans – sheet 4			
In the administrative area of Thurrock Council	Footpath 146	A length from a point 82 metres east of the centre point of where it passes under the existing Anglian Water jetty in an easterly direction for a distance of 40 metres.	Reference A To be substituted by a new footpath from a point 82 metres east of the centre point of where the existing footpath passes under the existing Anglian Water jetty in an easterly direction for a distance of 40 metres.

PART 2

HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) *Area*	*(2)* *Highway to be stopped up*	*(3)* *Extent of stopping up*
The rights of way and access plans – sheet 2		
In the administrative area of Thurrock Council	Footpath 144	A length of 345 metres from a point 162 metres south of its junction with the existing highway known as the Beeches in a southerly then easterly then southerly direction to the southern highway boundary of the proposed A1089 St Andrew's Road to be constructed.

PART 3

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

(1) *Area*	*(2)* *Private means of access to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New private means of access to be substituted/provided*
The rights of way and access plans – sheet 2			
In the administrative area of Thurrock Council	Reference a	A length from its junction with the existing unclassified Fort Road eastwardly for a distance of 165 metres.	Reference 1 To be substituted by a new private means of access connecting to the proposed A1089 St Andrew's Road to be constructed at a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line and continuing in an easterly direction for 250 metres to connect to the existing private means of access.
	-	-	Reference 2 A new private means of access to statutory undertakers' apparatus from the new unclassified unnumbered link road between the existing Fort Road and the new A1089 St Andrew's Road.

(1) *Area*	*(2)* *Private means of access to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New private means of access to be substituted/provided*
	-	-	Reference 3 A new private means of access to statutory undertakers' apparatus from the new A1089 St Andrew's Road.
	-	-	Reference 4 A new private means of access to statutory undertakers' apparatus from the new A1089 St Andrew's Road.

PART 4

IDENTIFICATION OF HIGHWAYS AND PRIVATE MEANS OF ACCESS ON PLANS

1. In relating this Schedule 4 to its corresponding rights of way and access plans, the provisions described in this Schedule are shown on the rights of way and access plans in the following manner—

(a) new highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided) as are included in column (4) of Part 1 of this Schedule, are shown by red stipple (as shown in the key on the rights of way and access plans) and are given a reference label (a capital letter in a circle) and will be a road unless the word 'footpath' appears beneath its reference letter in column (4);

(b) private means of access to be stopped up, as described in column (1) and (2) of Part 3 of this Schedule, are shown by a solid black band (as shown in the key on the rights of way and access plans), over the extent of stopping up described in column (3) of Part 3 and are given a reference label (a lower case letter in a circle); and

(c) new private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 3 of this Schedule, are shown by thin diagonal hatching (as shown in the key on the rights of way and access plans) and are given a reference label (a number in a circle).

SCHEDULE 5

Article 25

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

Compensation enactments

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

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

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

"(5A) If—

(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) (powers of entry) of the 1965 Act (as modified by paragraph 5(5) of Schedule 5 to the Port of Tilbury (Expansion) Order 2019);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 5 to the Port of Tilbury (Expansion) Order 2019) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right."

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

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

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant, under article 25 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(**a**) 1973 c. 26.

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

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

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

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

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

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

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11(**a**) (powers of entry) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 23 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restriction; and sections 11A(**b**)(powers of entry: further notices of entry), 11B(**c**) (counter-notice requiring possession to be taken on a specified date), 12(**d**) (unauthorised entry) and 13(**e**) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

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

(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(**b**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**c**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**d**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(**e**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**f**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(4) (modification of Part 1 of the 1965 Act) is also modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

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

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. —(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 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act) of the Port of Tilbury (Expansion) Order 2019 in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Tilbury (Expansion) Order 2019 which excludes the acquisition of subsoil or airspace only from this Schedule.

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

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the 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."

SCHEDULE 6

Article 32

LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

(1) *Plot Reference Number(s) shown on land, special category land and crown land plans*	*(2)* *Purpose for which temporary possession may be taken*	*(3)* *Relevant part of the authorised development*
01/01, 01/02, 01/03, 01/04, 01/05, 01/06, 01/07	Temporary possession of land for working space and to undertake works to improve the Asda roundabout and its slip roads, including to associated footways, cycleways and utilities.	Work No. 11
02/01	Temporary possession of land to undertake works to the existing St Andrew's Road, a tie in to the new road, to create the new road, to create a new pedestrian and cycle crossing and to divert utilities.	Work No. 9A
02/02	Temporary possession of land to undertake works to the existing St Andrew's Road and Ferry Road, a tie in to the new road, to create the new road, to undertake works, to modify and create new footways and cycleways and to divert utilities.	Work Nos. 9A and 9B
02/04	Temporary possession of land to stop up existing footpath 144 and existing level crossing.	Work Nos. 9A and 12
03/06	Temporary possession of land to undertake works to the existing Fort Road, the creation of a junction with a new road, and to modify and create new footways and cycleways and to divert utilities.	Work Nos. 9C and 10
03/07	Temporary possession of land to provide working space to undertake earthworks, divert utilities and undertake ecological restoration.	Work No. 10
03/13	Temporary possession of land for the improvement and raising of the existing Fort Road and the construction of a new bridge structure, and tie in of the raised highway to the highway on the existing bridge.	Work No. 10
03/14	Temporary possession of land to undertake works to the surface of the highway on the existing bridge and undertake utilities diversions.	Work No. 10
03/15	Temporary possession of land to construct traffic management measures and working space for works associated	Work No. 10

(1) *Plot Reference Number(s) shown on land, special category land and crown land plans*	*(2)* *Purpose for which temporary possession may be taken*	*(3)* *Relevant part of the authorised development*
	with the highway on the existing bridge and for the creation of the new bridge and undertake utility diversions.	
06/01	Temporary possession of land to provide working space for the construction of jetty facilities.	Work No. 1
06/03, 06/07, 06/08, 06/09	Temporary possession of land to provide working space for the construction of works for the accommodation and convenience of vessels and their protection zones.	Work Nos. 1 and 2
06/04	Temporary possession of land to remove the existing Anglian Water jetty.	Work No. 1
06/05	Temporary possession of land (including river bed) to remove the existing Anglian Water jetty.	Work No. 5

SCHEDULE 7

Article 45

PORT PREMISES BYELAWS – THE PORT OF TILBURY (EXPANSION) BYELAWS 2019

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These byelaws may be cited as the Port of Tilbury (Expansion) Byelaws 2019 and are to be treated as made by Port of Tilbury London Limited under section 161 (byelaws for port premises) of the Port of London Act 1968 and confirmed under section 168 (confirmation of byelaws) of that Act, as provided for by article 45 of the Port of Tilbury (Expansion) Order 2019.

Interpretation

2.—(1) In these byelaws, unless the context otherwise requires—

"the 1968 Act" means the Port of London Act 1968;

"aquatic sport" includes angling, diving, swimming, snorkelling, water skiing, aquaplaning, paragliding, power boat racing, para-kiting or parachute towing, use of personal water craft and paddleboards or any similar activity;

"authorised officer" means a Police Constable, the Company Harbour Master, a PLA Harbour Master, and a person authorised by the Company for the purpose of enforcing the byelaws;

"the Company" means Port of Tilbury London Limited (company number 02659118) of Leslie Ford House, Tilbury Freeport, Tilbury, Essex, RM18 7EH;

"Company property" means property within the Port Premises and which is owned by, or is under the administration management or control of the Company and includes any property under lease, tenancy or licence, from or to the Company;

"the Company Harbour Master" means every person having the powers of a harbour master due to their appointment as dock master by the Company under the 1968 Act;

"dangerous goods" means—

(a) any dangerous substance within the meaning of the Dangerous Goods in Harbour Areas Regulations 2016(**a**);

(b) any dangerous substances within the meaning of the Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018(**b**); or

(c) any dangerous goods within the meaning of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997(**c**);

"exhaust muffler" means a device used to decrease the amount of noise emitted from the exhaust of an engine;

"the extended port limits" means the extended port limits shown on the extended port limits plan;

"the extended port limits plan" means the plan of that description certified by the Secretary of State under article 58 (certification of documents) of the Order;

(**a**) S.I. 2016/721.
(**b**) S.I. 2018/68.
(**c**) S.I. 1997/2367.

"goods" means all wares, merchandise, articles or things of every description, other than vessels, and includes containers, trailers, flats and livestock;

"hovercraft" has the meaning assigned to it by section 4 (interpretation etc.) of the Hovercraft Act 1968(**a**);

"Master" when used in relation to any vessel means any person having the command, charge or management of the vessel for the time being;

"motor vehicle" means a mechanically propelled vehicle;

"the Order" means the Port of Tilbury (Expansion) Order 2019;

"owner" when used in relation to goods includes any consignor, consignee, shipper or agent for the sale custody or control of such goods and, when used in relation to any vessel includes any part owner, charterer consignee or mortgagee in possession;

"the PLA" means the Port of London Authority constituted in the 1968 Act;

"PLA Harbour Master" means any harbour master of the PLA and any of their authorised deputies and assistants and any person authorised by the PLA to act in that capacity;

"Police Constable" includes any constable appointed by the Company under section 154 (appointment, etc., of constables) of the 1968 Act;

"the Port Premises" means any land (including land covered by water) and premises as are situated within the extended port limits;

"the River" means that part of the river Thames within the limits of the PLA, as described in Schedule 1 (description of port limits) to the Port of London Act 1968;

"surveillance aircraft" means an unmanned aircraft which is equipped to undertake any form of surveillance or data acquisition;

"vehicle" means a motor vehicle or pedal cycle;

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

"works" means construction or repair works undertaken and the product of such works.

(2) Unless the context otherwise requires references in these byelaws to any Act whether public, general or local, or any instrument made under an Act, or any provision in any Act or any such instrument, is to be construed as references to that Act or instrument as amended by any other Act or instrument.

Application of the byelaws

3. These byelaws apply to the Port Premises.

Offences and defences

4.—(1) Contravention of any of byelaws 5, 8, 9, 10, 11, 12, 14, 22, 24, 28, 33, 37, 43, 48, 49, 50, 51, 56, 57 and 58 is punishable with a fine not exceeding level 3 on the standard scale.

(2) Contravention of any of byelaws 6, 7, 13, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 29, 30, 31, 32, 34, 35, 36, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 54, 55, and 59 is punishable with a fine not exceeding level 2 on the standard scale.

(3) Where the commission by any persons of an offence under these byelaws is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this byelaw whether or not proceedings are taken against any other person.

(**a**) 1968 c. 59.

(4) In any proceedings for an offence under these byelaws it is a defence for the person charged to prove—

(a) that the person took reasonable precautions and exercised all due diligence to avoid the commission of such an offence; or

(b) that the person had a reasonable excuse for their act or failure to act.

(5) If in any case the defence provided by this byelaw involves the allegation that the commission of the offence was due to the act or default of some other person, any person charged may not, without leave of the Court, rely on that defence unless, within a period ending 7 clear days before the hearing, the person charged has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as is then in their possession.

(6) Where a breach of these byelaws is committed by a body corporate and that breach is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, company secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, that person, as well as the body corporate, is guilty of that offence and is liable to be proceeded against under this byelaw.

(7) The institution of any proceedings under these byelaws is without prejudice to the recovery of damages or to the pursuance and enforcement of any other civil remedy in respect of any act or omission which is in contravention of the byelaws.

(8) A person who is suspected of a breach of the byelaws must provide their correct name and address when required to do so by an authorised officer.

PART 2

OPERATION

Fouling and obstruction of the Port Premises

5.—(1) A person must not intentionally and without authority from the Company Harbour Master, within the Port Premises, do, cause or permit to be done or omit to do anything tending to cause—

(a) an encumbrance, pollution or fouling of any water or foreshore of any part of the Port Premises;

(b) an obstruction or danger to navigation within the Port Premises;

(c) a danger to life or health within the Port Premises; or

(d) any nuisance.

(2) A person must not place, leave, tranship or dispose of ballast, rubbish or refuse except at such places within the Port Premises as may be designated by the Company.

(3) A person carrying out any activities referred to in paragraph (2) must ensure they are carried out in accordance with all necessary consents and approvals and such activities are carried out at the sole risk of the person placing, leaving, transhipping or disposing of the same.

(4) The Master of a vessel must not load or discharge any cargo, ballast, fuel, refuse or rubbish any part of which is liable in the course of such loading or discharging to fall into any part of the River within the Port Premises without taking such precautions by affixing canvas or tarpaulins or other suitable material or thing as will effectually prevent any such cargo, ballast, fuel, refuse or rubbish from falling into the River.

Aids to navigation

6.—(1) A person must not without lawful excuse, place, move in to or remove from the Port Premises, or otherwise interfere with, any light, fog signal, buoy, radar, reflector or other object used as an aid to navigation.

(2) A person must not within the Port Premises shine or direct a light, laser or other object in such a way as may mislead vessels or endanger navigation.

Plant and machinery, etc.

7.—(1) Any person in charge of any plant, machinery, equipment or appliance situated on the Port Premises must remove that plant, machinery, equipment or appliance from the Port Premises upon order of the Company, giving reasonable notice depending on the nature of the plant, machinery, equipment or appliance involved and the reasons for the removal.

(2) If the owner or operator of any plant, machinery, equipment or appliance fails to comply with such an order by the Company, the plant, machinery, equipment or appliance may be removed by the Company at the risk and expense of the owner or operator.

(3) All persons operating plant, machinery, equipment or appliances within the Port Premises must comply with any reasonable written notices given by the Company as to the use of safety devices in addition to those as may be required by law.

(4) Except with written permission of the Company, no person may store in or about the Port Premises any plant, machinery, equipment or appliance unless that plant, machinery, equipment or appliance is used for the purpose of loading, unloading or handling goods.

Yacht races and aquatic sports

8. A person must not conduct or participate in a yacht or boat race or other aquatic sport, or in any other similar activity, within the Port Premises.

PART 3

PROTECTION AND CONTROL OF PORT PREMISES

Entry upon Port Premises

9.—(1) A person must not enter or be upon the Port Premises except pursuant to express statutory authority or written licence, pass or other permission from the Company and upon the terms and conditions of that licence, pass or permission.

(2) A licence, pass or permission may be restricted to allow entry to certain areas of the Port Premises only. No person may enter an area of the Port Premises for which that person does not have a licence, pass or permission.

(3) The Company may withhold, delay, refuse or revoke any licence, pass or permission referred to in this byelaw in relation to any person.

(4) Every person on the Port Premises must at the instruction of any authorised officer, produce any pass or other evidence of their licence or permission to be on the Port Premises.

(5) A person must not break or get over, through or under a boundary or other fence, or trespass upon the Port Premises.

(6) No person or vehicle is permitted to be or remain upon or within the limits of any railway lines as designated by the Company without the permission of the Company.

(7) A person must not write upon or soil, deface, mark or injure any wall, shed, barricade, railing, fence, post, or any other property belonging to the Company.

(8) A person must not use or have in their possession any key (including an electronic key) with which they can obtain entry or exit to or from any of the docks, warehouses, sheds or other buildings belonging to the Company unless such key has been issued to the person by the Company with permission for use.

(9) Every person in charge of a vehicle must stop at the designated barriers or security posts at the entrances to the Port Premises as directed by the Company.

(10) A person must not enter or remain on board any vessel without permission of the Master or other lawful excuse.

(11) The Master of every vessel must not refuse any authorised officer entry upon the vessel if the authorised officer has a reasonable suspicion of the contravention of any byelaw or the commission of an offence.

(12) A person on Port Premises who is suspected of an offence or being in breach of a byelaw or who is without proper business at the Port Premises must surrender any pass in their possession and leave the Port Premises immediately on being required to do so by an authorised officer.

Photography

10. A person must not take photographs within the Port Premises without the Company's permission.

Climbing

11. A person must not climb, scale or otherwise ascend any structure or building within the Port Premises without the Company's permission.

Intoxicating substances

12.—(1) A person must not be in an intoxicated condition within the Port Premises.

(2) A person must not, without permission of the Company consume alcohol within the Port Premises.

Inspection of bags, parcels, etc.

13. A person must not refuse to produce for inspection, at the request of any authorised officer, the contents of any outer clothing, article, bag, case, parcel, vehicle, box or container of any kind in their possession, on the Port Premises.

Non-permitted activities

14.—(1) A person who is on the Port Premises must not, without the prior consent of the Company—

(a) sell or offer for sale any goods or services;

(b) distribute, post or leave any circulars, leaflets or advertising matter;

(c) undertake personal solicitation;

(d) organise any general meeting; or

(e) deliver any address to any audience or gather together any persons whereby any work or business within the Port Premises or the control, management or use of the Port Premises is, or is likely to be, obstructed, impeded or hindered.

Structures and works

15.—(1) No structure or work which interferes with the operation of the Port Premises may be placed or erected on the Port Premises except with written permission from the Company and upon such terms and conditions as the Company may stipulate.

(2) Every structure or work placed or erected in contravention of this byelaw must, upon order of the Company, be removed forthwith by the owner of such structure or work thereof or by the person by whom such structure or work was so placed or erected.

(3) Where a structure or work is not removed pursuant to an order of the Company under this byelaw, the Company may at the risk and expense of the owner or person referred to in this byelaw undertake such removal.

Leaving of goods

16.—(1) A person must not place or leave any goods on the Port Premises in such a manner as to create an obstruction or interference.

(2) A person must not, without written permission of the Company, place or leave any goods on the Port Premises except goods for use—

(a) by vessels;

(b) in connection with shipping;

(c) by the Company; or

(d) in connection with railway wagons, road transport, sheds or harbour facilities.

(3) A person must not place or leave goods on the Port Premises, including any goods coming within paragraphs (2)(a) to (2)(d) of this byelaw, which are likely to cause a nuisance or endanger life or health.

Artificial lights

17.—(1) Subject to paragraph (2), a person must not use any artificial light on the Port Premises without the prior permission of the Company.

(2) Electric lights that do not pose a potential risk to the navigational safety of vessels or present a health and safety or fire risk may be used on the Port Premises.

(3) In any event, any person in control of any electric light at the Port Premises must immediately comply with any direction of the Company Harbour Master in relation to the use, extinction or screening of such electric light.

Railway rolling stock

18. Railway rolling stock or locomotives must not be brought on to the Port Premises except with the Company's permission and upon such terms and conditions as the Company may determine.

Live animals

19.—(1) A live animal must not be brought into the Port Premises without the express prior permission of the Company.

(2) Paragraph (1) does not apply to—

(a) dogs in the custody of a police officer or member of HM Forces or UK Border Forces on duty;

(b) guide dogs for the visually impaired;

(c) a dog trained by Hearing Dogs for Deaf People (registered charity number 293358); or

(d) any other dog that is similarly specifically trained by a registered charity to assist any person with any disability within the meaning of the Equality Act 2010(**a**).

Compliance with signage and notices

20.—(1) A person must not act in contravention of any printed or written notice, direction or sign displayed by the Company within the Port Premises unless otherwise directed by the Company.

(2) A person must not remove, or interfere with any mark, printed or written notice, direction, sign or device, order, byelaw or regulation of the Company which is posted, attached, or affixed to or on the Port Premises.

(**a**) 2010 c. 15.

Erection of signs

21. A person must not display, place or erect on the Port Premises without written permission of the Company any placard, hoarding, poster, advertisement, sign, device or similar article.

Removal of Company property

22. A person must not remove from Port Premises without permission of the Company any Company property.

Reporting of accidents

23.—(1) Every person involved in an accident within the Port Premises that causes the death of or an injury to any other person or loss of or damage to property, must as soon as reasonably practicable and in any event within 7 days of being requested to do so by the Company, deliver to the Company a written report giving full details of the accident.

Surveillance

24. A person must not operate surveillance aircraft within or over the Port Premises without the Company's permission.

Authority for removal of goods

25. A person removing goods from the Port Premises must, on request, provide the Company with a copy of their authority to remove those goods in writing or electronically as stipulated by the Company.

PART 4

OPERATION OF VEHICLES

Driving of vehicles

26.—(1) A person must not drive or otherwise operate a vehicle within the Port Premises without the due care and attention or without reasonable consideration for other persons within the Port Premises.

(2) A person driving or otherwise operating a motor vehicle within the Port Premises must give way to any locomotive, railway rolling stock or other rail or rail-mounted vehicle.

Compulsory weighing

27. The Company may at any time require the operator of any vehicle (whether loaded or unloaded), to submit the vehicle to compulsory weighing at weight scales designated by the Company for that purpose. Weighing will be carried out in accordance with any requirement as the Company may stipulate.

Restrictions on operation of vehicles

28.—(1) A person must not operate a vehicle within the Port Premises—

(a) in a shed, warehouse or open storage area, except to pick up or deliver goods or for other purposes permitted by the Company;

(b) between railway tracks;

(c) across railway tracks except at a signed railway crossing;

(d) at speeds greater than those indicated by speed restriction signs or in a manner which may cause a nuisance, death or injury to persons or damage to property;

(e) which is loaded in excess of its permitted load limit, or whose load is not adequately secured and supported;

(f) from which petrol, oil, or any other substance likely to be dangerous or to constitute a nuisance, is dripping, leaking, escaping or falling; or

(g) which, in the reasonable opinion of the Company is improperly loaded or unserviceable or likely to cause damage to roadways or other property.

(2) All persons operating vehicles within the Port Premises must comply with the provisions of the rules in the Highway Code England, Scotland and Wales (as updated from time to time).

Restrictions on parking vehicles

29.—(1) A person must not park a vehicle within the Port Premises—

(a) unless the Company has first issued a permit for such person to do so;

(b) in such a manner as to create an obstruction or interference;

(c) elsewhere than in a parking area approved and designated as such by the Company;

(d) which is loaded in excess of its permitted load limit, other than at an appropriate place for the purpose of immediately reducing its load; or

(e) from which petrol, oil, or any other substance likely to be dangerous or to constitute a nuisance, is dripping, leaking, escaping or falling.

(2) Subject to paragraph (3), for the purposes of this byelaw, a vehicle is parked wherever it is stopped, whether or not the driver remains in the vehicle and whether or not the engine of the vehicle is running, and the term includes any vehicle apparently abandoned.

(3) A vehicle is not parked contrary to this byelaw where it is stopped—

(a) as required by a traffic control device or by an authorised officer; or

(b) whilst the vehicle cannot move due to an obstruction or failure of the vehicle.

Supply and discharge of fuels and oils

30. A person must not supply to, receive into or discharge from, a vehicle on the Port Premises any petrol or other fuel or oil except at locations and times approved by the Company.

PART 5

BERTHING, MOORING AND ANCHORING

Information note:

These Byelaws only relate to the Port Premises.

The PLA's Thames Byelaws 2012 ("the PLA's Byelaws") apply throughout the River, including within the Port Premises.

The PLA's General Directions for Navigation in the Port of London 2016 ("the PLA's General Directions") apply throughout the River, including within the Port Premises.

Details of the PLA's Byelaws and General Directions can be found at:

https://www.pla.co.uk/Safety/Regulations-and-Guidance/Byelaws-Rules-and-Regulations-Governing-Navigation

Vessels to be berthed only with permission of the Company Harbour Master and as directed

31.—(1) The Master of any vessel may only berth or moor that vessel within the Port Premises with the permission of the Company Harbour Master and then only at such place and in such manner as directed by the Company Harbour Master.

(2) The permission referred to in paragraph (1) must be obtained before such vessel enters the River or, as the case may be, moves from any place within the River.

(3) The Master of any vessel may only permit such vessel to move from one berth to another berth within the Port Premises with the prior permission of the Company Harbour Master.

(4) The Master of a vessel clearing from the Port Premises must give notice to the Company Harbour Master of their intention to vacate the berth occupied by such vessel.

(5) A vessel must not use its anchor within the Port Premises, whether to facilitate berthing or mooring or otherwise, unless it is—

(a) in an emergency or to ensure a safe berthing; and

(b) the Company Harbour Master has given prior consent.

Information note:

See also the reporting, passage plan and vessel movement requirements of the PLA's General Directions.

Vessels to be able to move on short notice and to have crew available at all times

32. The Master of every power-driven vessel berthed or moored within the Port Premises must ensure that, unless exempted by the Company, such vessel must at all times have—

(a) sufficient power and crew available to enable the vessel to move under its own power on short notice;

(b) sufficient crew on board to operate winches and handle mooring lines; and

(c) sufficient crew to ensure that the vessel is at all times securely made fast and that the moorings are adjusted as necessary to allow for the rise and fall of the tide and for the loading and unloading of cargo.

Lines to be made fast

33.—(1) The Master of every vessel berthed or moored within the Port Premises must ensure that the lines of such vessel are made fast only to facilities provided for berthing or mooring purposes.

(2) Lines may not be laid across any quay or over the River in such manner as to obstruct the passage of any other vessel.

Vessels berthing alongside other vessels

34.—(1) The Master of every vessel must ensure that—

(a) such vessel does not make fast to or secure alongside any other vessel within the Port Premises without permission of the Company Harbour Master and the approval of the PLA Harbour Master;

(b) when ordered by the Company Harbour Master, the Master permits any other vessel of no greater tonnage, measurement or deadweight, to make fast to, or secure alongside, such vessel;

(c) where the Master's vessel has another vessel secured alongside—

(i) the Master allows a free and unencumbered passage over such vessel to the outer vessel for loading, unloading and access to and from the quay; and

(ii) the lines by which the outer vessel is made fast or secured must not, except in any emergency, be cut or cast off without permission of the Company Harbour Master and without notice of the intention to do so having been given to the Master of the outer vessel which is so made fast or secured.

Delays in departure to be reported

35. Where a vessel is delayed in leaving the Port Premises the Master of that vessel must report immediately to the Company Harbour Master the reason and the probable duration of the delay.

Information note:

See also the reporting and passage plan requirements of the PLA's General Directions.

Vessels not to test equipment without permission of the Company Harbour Master or shut down engines

36. The Master of every vessel must ensure that such vessel—

(a) when berthed at the Port Premises or alongside another vessel within the Port Premises does not without the permission of the Company Harbour Master engage in equipment or machinery tests or any operations likely to endanger property at the Port Premises or other vessels;

(b) when berthed or moored within the Port Premises, operates its engines in accordance with any directions given by the Company Harbour Master; and

(c) does not use any propulsion or other manoeuvring machinery or equipment in such manner as to cause damage to Company property.

Bunkering

37.—(1) A Master of any vessel berthed at the Port Premises must not permit the same to receive bunkers except with the permission of the Company Harbour Master.

(2) When bunkers are being supplied every Master must ensure that all scuppers and other openings are blocked off to the Company Harbour Master's satisfaction.

(3) All vessels providing bunker services within the Port Premises must carry oil spill response and clean-up equipment, including containment booms, and must have crew trained in its use.

Information note:

See also the reporting and passage plan requirements in the PLA's General Directions.

Vessels to display name and draught marks

38. The owner of every vessel of over 60 tonnes gross registered tonnage within the Port Premises must ensure that such vessel conspicuously displays its name and accurate draught marks.

Vessels to have sufficient means of access and egress

39. The Master of every vessel when berthed within the Port Premises must ensure—

(a) that the vessel has suitable means of access and egress, clearly illuminated at night, for the use of persons boarding or leaving the vessel;

(b) that every means of access and egress is attended at all times by a watchman or other responsible person and has a suitable heaving line and lifebuoy conveniently located thereby; and

(c) that suitable safety nets are used beneath every means of access and egress and in such other places as may be necessary to prevent persons or goods from falling into the River.

Cargo handling equipment not to obstruct and to be well lit

40. Any person placing or leaving equipment for loading cargo on to, or unloading cargo from or handling cargo on a vessel within the Port Premises must—

(a) ensure that it is placed in such a manner as to give clear and uninterrupted access to and from the vessel and does not interfere with any other operation within the Port Premises; and

(b) ensure that, from sunset to sunrise, any such equipment is clearly illuminated.

Side ports

41. The Master of every vessel must ensure that the side ports of such vessel whilst within the Port Premises from sunset to sunrise are—

(a) clearly illuminated when open; and

(b) closed when not in use.

Display of signals and use of lights for loading and unloading

42. The Master of every vessel must ensure that—

(a) when that vessel is loading or unloading in the Port and is using lights for such purpose, those lights are used in safe positions and are of a type approved by the Company, and any connecting wires between ship and shore for those lights are properly insulated, protected against damage, do not constitute a hazard to the movement of persons or equipment and are connected in accordance with the directions of the Company;

(b) where that vessel is turning its propeller while berthed at the Port Premises, the vessel indicates such activity by hanging signboards illuminated at night over each quarter in line with such propeller; and

(c) that vessel displays correct night and day shapes, flags and lights for the operation in which it is engaged.

Rodents

43. The Master of a vessel must not permit the passage of any rodents between the vessel and the Port Premises or onto any other vessel and must take all necessary precautions including the attachment of suitable devices to the lines of the vessel, for that purpose.

Exhaust mufflers to be used at all times

44. The Master of every vessel must ensure that the internal combustion engines on such vessel when operating within the Port Premises are equipped with efficient exhaust mufflers, which must be used continuously when the engines are running.

Rigging gear etc., not to overhang side of vessel

45. The Master of every vessel must ensure that no rigging gear or other equipment of such vessel when within the Port Premises overhangs or projects from the side of the vessel in a manner that may endanger life or property.

Whistles, sirens, etc. not to be sounded unnecessarily

46. The Master of every vessel must ensure that no whistle, siren or fog-horn on such vessel when within the Port Premises is sounded unnecessarily.

All vessels to maintain adequate watch and notify any accident, fire etc.,

47. Unless exempted in writing by the Company, the Master of every vessel must ensure that when within the Port Premises such vessel maintains an adequate watch and, in the event of any danger, accident, disturbance or fire on that vessel, that such watch immediately gives an alarm and notifies:

(a) the nearest Police Constable;

(b) the Company's Health and Safety Manager;

(c) the Company Harbour Master;

(d) the PLA Harbour Master; or

(e) any other authorised officer.

Vessels not to be abandoned, sunk etc.,

48. A person must not abandon, sink, burn, break up, dismantle or cast adrift within the Port Premises any vessel or any other material.

All accidents, collisions and groundings within the Port Premises to be reported

49.—(1) The Master of a vessel involved in—

(a) an accident causing death or injury to persons or loss or destruction of or damage to property;

(b) a collision;

(c) a grounding; or

(d) any pollution or fouling of any water or foreshore of the River,

within the Port Premises, must as soon as reasonably practicable deliver to the Company Harbour Master log extracts covering the incident and a detailed written report of such accident, collision or grounding.

(2) Notwithstanding any other report required by this byelaw, the Master of any vessel involved in an accident, collision or grounding within the Port Premises must immediately report the incident by the quickest possible means to the Company Harbour Master.

(3) Nothing in this byelaw relieves the Master of, or discharges, any legal obligation to make any other notification to any other person or body.

Information note:

See also the accident and incident reporting requirements in the PLA's Byelaws.

No dredging or removal of obstructions to be carried out without permission

50.—(1) A Master of any vessel must not engage in dredging or the removal of obstructions within the Port Premises without the permission of the Company.

(2) In the case of dredging, the Company must not grant permission unless the Master will be acting in accordance with plans approved under Part 3 of Schedule 10 (protective provisions) to the Order or a licence granted by the PLA under section 73(**a**) (licensing of dredging, etc.) of the 1968 Act.

Recovery of lost cargo or gear

51.—(1) The Master of a vessel which has lost cargo or ship's gear within the Port Premises must, after obtaining permission from the Company Harbour Master, quickly recover the lost

(**a**) As amended by section 46 of the Criminal Justice Act 1982 (c. 48).

article if practicable, but if such recovery is not made, the Master of that vessel, must deliver to the Company a written report of the loss giving—

(a) the appropriate location of the lost article;

(b) a description of the lost article; and

(c) other pertinent details relating to the loss.

(2) Where the Company receives a report pursuant this byelaw, the Company may, at the risk and expense of the owner of the vessel which lost the article, recover the lost article.

Information note:

See also the accident and incident reporting and foreshore protection requirements in the PLA's Byelaws.

PART 6

NOTICE, CERTIFICATES AND MANIFESTS

Notice, certificates and manifests

52.—(1) The owner of every vessel must, wherever possible, give notice to the Company of the expected date and approximate time of arrival of their vessel at the berth.

(2) The Master of a vessel arriving at the Port Premises must, not less than 24 hours before the vessel's arrival, deliver to the Company a certificate signed by the Master setting forth as much of the following information as is required in respect of that vessel by the Company—

(a) name of vessel;

(b) port of registry;

(c) gross tonnage;

(d) gross registered tonnage;

(e) draught upon arrival;

(f) time of arrival;

(g) last port of call;

(h) name of Master;

(i) name of owner or agent;

(j) tonnage of goods to be unloaded;

(k) number of passengers to be landed;

(l) port of origin;

(m) number of bags of mail to be landed;

(n) official number;

(o) length overall; and

(p) details of all dangerous goods either for discharge at the Port or which are to remain on board the vessel.

(3) The Master in charge of a vessel arriving at the Port Premises must immediately deliver to the Company one copy, or more copies as requested by the Company, of the manifest of the vessel (certified by HM Revenue & Customs in the case of a vessel engaged in foreign trade or by the person in charge of the vessel engaged in domestic trade) setting forth details of cargo to be unloaded at the Port Premises including marks and numbers of consignments on each Bill of Lading, weigh bill or similar document, together with the weight and measurement of such cargo.

Delivery of manifest on departure

53. The Master of a vessel clearing from the Port Premises must, within 7 days after the vessel's departure, deliver to the Company one copy, or more copies as requested by the Company, of the manifest of the vessel (certified by HM Revenue & Customs in the case of a vessel engaged in foreign trade or by the Master of the vessel if engaged in domestic trade) setting forth details of cargo that was carried on the vessel including marks and numbers of consignments on each Bill of Lading, weigh bill or similar document, together with the weight and measurement of such cargo.

PART 7

AIRSHIPS, HYDROFOIL AND AIR CUSHION CRAFT

Use of Port Premises by hydrofoil and air cushion craft

54. An airship, hydrofoil, hovercraft or other air cushion craft must not land on, take off from or operate in the water within the Port Premises except with prior permission of the Company and at locations designated by the Company.

PART 8

FIRE PREVENTION

Compliance with fire protection and prevention standards

55.—(1) Every person within the Port Premises must comply with all such standards and policies for fire prevention and protection against fire within the Port Premises as are from time to time published by the Company.

(2) The Master of any vessel must give reasonable facility and assistance to the fire, police, ambulance or other emergency services for dealing with alleviating or preventing any emergency.

Hot working

56.—(1) A person must not use any naked flames, hot rivets, welding, grinding or burning equipment within the Port Premises, or in any vessel berthed within the Port Premises, except with permission of the Company and in accordance with the terms of that permission.

(2) A person must not burn, boil or heat by fire any article or substance on the Port Premises except with permission of the Company and in such place and in such manner as the Company directs.

No rockets etc., to be set off and no blasting operations to be carried out without permission

57. A person, other than a person authorised by HM Coastguard or the Company, must not set off rockets or fireworks or carry out blasting operations within the Port Premises.

Prohibition of smoking etc.

58.—(1) A person must not smoke in any part of the Port Premises except at locations designated as smoking areas where notices are displayed permitting the possession of such lights or device.

(2) In any place within the Port Premises, including any vessel moored within the Port Premises, where explosives or dangerous goods (including highly inflammable goods) are located, a person must not have in their possession any match or other fire-producing device or wear or have in their possession any article or substance which may cause explosion or fire, except with the permission of the Company Harbour Master.

Fire hydrants

59. A person must not use a fire hydrant located on Company property for any purpose other than putting out a fire or in connection with a fire drill without permission of the Company and then only in accordance with the terms of such permission.

SCHEDULE 8

Article 52

TRAFFIC REGULATION MEASURES, ETC.

PART 1

SPEED LIMITS & RESTRICTED ROADS

In the administrative area of Thurrock Council—

As shown on the traffic regulation measures plan—

(1) *Road name, number and length*	*(2)* *Speed limit*
The traffic regulation measures plans – sheet 1	
St Andrew's Road, A1089 From a point 10 metres southeast of the southern kerb of the access road to Tilbury Port to a point 30 metres northwest of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.	40 mph speed limit
St Andrew's Road, A1089 From a point 30 metres northwest of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 440 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.	Restricted Road
St Andrew's Road, A1089 From a point 440 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	40 mph speed limit
Ferry Road, Classified un-numbered From a point 420 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout to a point 130 metres south of the centre point of the existing Riverside Rail Freight Terminal roundabout.	Restricted Road
Fort Road, Unclassified From the centre point of the existing highway known as unclassified Fort Road at a point 90 metres north of its junction with the existing highway known as Brennan Road to a point 335 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	40 mph speed limit
Fort Road, Unclassified From a point 335 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 875 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	20 mph speed limit

(1) *Road name, number and length*	*(2)* *Speed limit*
Fort Road, Unclassified From a point 875 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 130 metres south of the centre point of the existing Riverside Rail Freight Terminal roundabout.	Restricted Road
Link Road, Classified un-numbered From a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	40 mph speed limit
The traffic regulation measures plans – sheets 1 and 2	
St Andrew's Road, A1089 From a point 10 metres southeast of the southern kerb of the access Road to Tilbury Port to a point 30 metres northwest of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.	40 mph speed limit
The traffic regulation measures plans – sheet 2	
Dock Road, A1089 From a point 80 metres north of the point where the existing A1089 Dock Road meets the Asda roundabout, to a point 80 metres south of the point where the existing A1089 St Andrew's Road meets the Asda roundabout, including the entire circumference of the entire Asda Roundabout.	30 mph speed limit
St Andrew's Road, A1089 From a point 80 metres south of the point where the existing A1089 St Andrew's Road meets the Asda roundabout to a point 10 metres southeast of the southern kerb of the existing access road to Tilbury Port.	40 mph speed limit
The traffic regulation measures plans – sheets 2 and 3	
Dock Road, A1089 From a point 300 metres southwest of the centre point of the bridge where the existing highway known as unclassified Marshfoot Road passes over the existing A1089 Dock Road to a point 80 metres north of the point where the existing A1089 Dock Road meets the Asda roundabout.	50 mph speed limit

PART 2

PROHIBITIONS

In the administrative area of Thurrock Council—

As shown on the traffic regulation measures plan—

(1) *Road name, number and length*	*(2)* *Measures*
The traffic regulation measures plans – sheet 1	
St Andrew's Road, A1089 From a point 440 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	No waiting at any time.
Ferry Road, Classified un-numbered From a point 420 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout to a point 130 metres south of the centre point of the existing Riverside Rail Freight Terminal roundabout.	No waiting at any time.
Declassified Ferry Road classified un-numbered From a point 215 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 375 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.	Prohibition of motor vehicles.
Fort Road, Unclassified From the centre point of the existing highway known as unclassified Fort Road at a point 90 metres north of its junction with the existing highway known as Brennan Road to a point 130 metres south of the centre point of the existing Riverside Rail Freight Terminal roundabout.	No waiting at any time.
Link Road, Classified un-numbered From a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	No waiting at any time.
The traffic regulation measures plans – sheets 1 and 2	
St Andrew's Road, A1089 From a point 10 metres southeast of the southern kerb of the access Road to Tilbury Port to a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	No waiting at any time.

PART 3

REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

In the administrative area of Thurrock Council—

As shown on sheet 4 of the traffic regulation measures plan—

(1) *Road name, number and length*	*(2)* *Title of Order*
St Andrew's Road, A1089 From a point 50 metres southeast of the south eastern kerbline of the Dock entrance road extending in a south easterly direction for a distance of 845 metres.	(St Andrew's Road, Tilbury)(40 mph Speed Limit) Order 2010.

SCHEDULE 9

Article 53

DEEMED MARINE LICENCE

PART 1

GENERAL

Interpretation

1. In this licence—

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009;

"the authorised development" has the meaning given in paragraph 3(2);

"business day" means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(**a**);

"commence" means beginning to carry out any part of a licensed activity and "commenced" and "commencement" are to be construed accordingly;

"condition" means a condition in Part 2 and Part 3 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

"construction environmental management plan" means the document of that description in Schedule 11 (documents to be certified) to the Order, certified by the Secretary of State as the construction environmental management plan for the purposes of the Order;

"the environmental statement" means the document of that description in Schedule 11 to the Order, certified by the Secretary of State as the environmental statement for the purposes of the Order;

"the existing river jetty" means the jetty existing in the river Thames at the date of this Order coming into force, as shown shaded blue and labelled *Existing Jetty Superstructure* on sheet 3 of the works plans;

"the licence holder" means Port of Tilbury London Limited and any transferee pursuant to article 51 (consent to transfer benefit of Order) of the Order;

"licensed activity" means any of the activities specified in Part 1 of this licence;

"marine written scheme of investigation" means the marine archaeological written scheme of investigation contained in document reference v6 [PoTLL/T2/EX/228], appendix 12.E of the environmental statement;

"the MMO" means the Marine Management Organisation;

"the Order" means the Port of Tilbury (Expansion) Order 2019; and

"the River" means so much of the river Thames and the Thames estuary, as is within the UK marine area.

Contacts

2.—(1) Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence are as follows—

(a) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH; Tel – 0300 123 1032; Fax – 0191 376 2681; Email – marine.consents@marinemanagement.org.uk;

(**a**) 1971 c. 80.

(b) Marine Management Organisation, MMO Lowestoft, Pakefield Road, Lowestoft, Suffolk, NR33 0HT; Tel – 01502 573 149 or 01502 572 769; Email – lowestoft@marinemanagement.org.uk.

(2) The contact details for the MMO Marine Pollution Response Team are—

Tel (during office hours) – 0300 200 2024;

Tel (outside office hours) – 07770 977 825 or 0345 051 8486;

Email – dispersants@marinemanagement.org.uk.

or such replacement contact details notified to the licence holder in writing by the MMO.

Details of licensed marine activities

3.—(1) Subject to the licence conditions in Part 2, this licence authorises the licence holder (and any agent, contractor or subcontractor acting on their behalf) to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

(a) form part of, or are related to, the authorised development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemptions specified by order) of the 2009 Act.

(2) In this paragraph "the authorised development" means—

(a) the construction of a Roll on Roll off berth on the river Thames comprising—

(i) the construction of dolphins in the river bed with associated fenders and walkways;

(ii) the construction of a floating pontoon with associated restraint structures;

(iii) the construction of structures and buildings on the floating pontoon;

(iv) the construction of an approach bridge with abutments, with a roadway, footway and wind barrier on the surface of the bridge;

(v) the construction of a linkspan bridge between the floating pontoon and the approach bridge, with a roadway, footway and wind barrier on the surface of the bridge;

(vi) the construction of a surface water outfall;

(vii) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;

(viii) the alteration and renewal of an existing flood defence;

(ix) the removal of the existing jetty known as the Anglian Water jetty and its associated structures;

(x) related dredging works within the river Thames for the above and the disposal of any arisings from such dredging; and

(xi) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames;

(b) the construction of a Construction Materials and Aggregates Terminal (CMAT) berth on the river Thames comprising—

(i) the construction of dolphins in the river bed with associated fenders and walkways;

(ii) the construction of a conveyor hopper and supporting structures on the river bed;

(iii) the installation of pipework on the existing river jetty and connections to Work No. 8A of Schedule 1 (authorised development) to the Order;

(iv) the construction of a conveyor and supporting structures in the river bed;

(v) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;

(vi) related dredging works within the river Thames for the above and the disposal of any arisings from such dredging; and

(vii) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames;

(c) activities to—

(i) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including river walls);

(ii) carry out excavations and clearance (excluding clearance or detonation of ordnance), deepening, scouring, cleansing, dumping and pumping operations;

(iii) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(**a**)) obtained in carrying out any such operations;

(iv) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);

(v) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the river; and

(vi) construct, place and maintain works and structures including piled fenders, protection piles and cofferdams but not including groynes;

(d) other works and development—

(i) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights, cofferdams, fencing and other boundary treatments including bollards and security cameras;

(ii) embankments, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, highway lighting and fencing; and

(iii) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses;

(e) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including—

(i) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and

(ii) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works;

(f) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons); and

(g) activities to carry out works and development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the operation and maintenance of the authorised development,

and any other element of the authorised development as defined by article 2 of the Order.

(3) Subject to paragraph (4), the grid coordinates within the UK Marine Area within which the licence holder may carry out a licensed activity are specified below—

(**a**) 1995 c. 21.

Point reference	*Easting (m)*5*	*Northing (m) *5*
P01	565744.828	175345.292
P02	565749.328	175329.143
P03	565673.531	175323.596
P04	565673.001	175342.102
P05	565649.201	175339.000
P06	565649.686	175339.000
P07	565632.366	175321.567
P08	565638.047	175320.177
P09	565588.000	175253.280
P10	565432.000	175252.020
P11	565436.958	175225.590
P12	565651.138	175140.025
P13	565746.298	175087.712
P14	566725.508	175139.190
P15	566725.264	175146.895
P16	566367.073	175232.706
P17	566357.738	175364.065
P18	566111.400	175349.600
P19	566076.861	175363.690
P20	566043.816	175364.297

(4) No hydrodynamic dredging may be carried out by the licence holder within the area within the grid coordinates for the area of the River specified below and more particularly shown on the works plans—

Exclusion Zone	*Easting (m)*5*	*Northing (m)*5*
EZ01	566376.99	175224.03
EZ02	566403.39	175224.01
EZ03	566492.00	175202.78
EZ04	566492.00	175131.94
EZ05	566377.00	175125.07

PART 2

CONDITIONS APPLYING TO LICENSABLE ACTIVITIES

Notifications regarding licensed activities

4.—(1) The licence holder must inform the MMO and HM Coastguard in writing—

(a) at least 5 business days prior to the commencement of the first licensed activity; and

(b) within 5 business days following the completion of the final licensed activity,

of the commencement or the completion (as applicable).

5.—(1) The licence holder must provide the following information to the MMO—

(a) the name and function of any agent or contractor appointed to engage in any licensed activity within seven days of appointment; and

(b) details of any vessel being used to carry on any licensed activity listed on behalf of the licence holder, together with details of the vessel owner or operating company not less than 24 hours before the commencement of the licensed activity in question.

(2) Any changes to details supplied under subparagraph (1) must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activity in question.

(3) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

6. The licence holder must ensure that a copy of this licence has been read and understood by any agents and contractors, together with any masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the licence holder, as notified to the MMO under condition 10.

7. Copies of this licence must be available for inspection at the following locations—

(a) the licence holder's registered office; and

(b) during the construction of the authorised development only, at any site office which is adjacent to or near the River and which has been provided for the purposes of the construction of the authorised development.

8. The licence holder must request that the masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the licence holder as notified to the MMO under condition 5 make a copy of this licence available for inspection on board such vessels during the carrying out of any licensed activity.

Construction Environmental Management Plan

9. All licensed activities must be carried out in accordance with the construction environmental management plan where applicable.

Construction method statement

10.—(1) Following consultation with the Environment Agency and Natural England, the licence holder must submit a construction method statement, together with a report on the consultation carried out, for approval by the MMO, at least 6 weeks prior to the commencement of any licensed activity.

(2) The construction method statement must include the following details—

(a) the detailed construction methodology to be employed by the licence holder in carrying out the licensed activity;

(b) a programme of works including timings and durations, method of delivery of material to site and plant to be used during the works; and

(c) if relevant, the results of further sediment sampling undertaken in accordance with a sampling plan approved under condition 11.

(3) The licence holder must not commence the licensed activity until the MMO has approved in writing the submitted construction method statement.

(4) The licensed activity must be carried out in accordance with the approved construction method statement, unless otherwise agreed in writing by the MMO.

Sediment sampling

11.—(1) If the licence holder considers that sediment sampling is required to demonstrate the appropriateness of a construction methodology to be included in a construction method statement submitted to the MMO for approval under condition 10, prior to submitting that construction method statement to the MMO, the licence holder must submit a sediment sampling plan for approval by the MMO.

(2) The licence holder must not submit the relevant construction method statement mentioned in sub-paragraph (1) to the MMO until sediment sampling has been undertaken in accordance with the approved sediment sampling plan, unless otherwise agreed in writing by the MMO.

Piling

12.—(1) Where a licensed activity involves percussive piling the licence holder must commence piling activities using soft-start techniques for at least 20 minutes to ensure an incremental increase in pile power until full operational power is achieved. Should piling cease for at least 20 minutes the soft-start procedures must be repeated.

(2) No piling which is a licensed activity may be carried out between the hours of 18:00 to 08:00.

Dredging

13. Water injection dredging which is a licensed activity must not be undertaken in the period 1st June to 30th August.

Marine written scheme of archaeological investigation

14.—(1) The authorised development must be carried out in accordance with the marine written scheme of investigation.

(2) Archaeological method statements together with a report on any consultation carried out in their preparation must be submitted to the MMO for approval in accordance with the provisions of the marine written scheme of investigation six weeks before any works to which the method statements relate commence.

Concrete and cement

15.—(1) The licence holder must not discharge waste concrete slurry or wash water from concrete, or cement into the River.

(2) Where practicable, the licence holder must site concrete and cement mixing and washing areas at least 10 metres away from the River and any surface water drain to minimise the risk of run off entering the River.

Coatings and treatments

16. The licence holder must ensure that any coatings and any treatments are suitable for use in the River and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency.

Pollution and Spills

17. The licence holder must—

(a) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers;

(b) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team pursuant to paragraph 2(2) of this licence within 12 hours of the spill occurring; and

(c) store all waste in designated areas that are isolated from surface water drains and open water and are bunded.

Post-construction

18. The licence holder must remove all temporary structures, waste and debris associated with the construction activities within 6 weeks following completion of the final construction activity.

Disposal

19. The licence holder must inform the MMO of the location and quantities of material disposed of each month under this licence. This information must be submitted to the MMO by 15th February each year for the months August to January inclusive, and by 15th August each year for the months February to July inclusive.

20. The licence holder shall ensure that only inert material of natural origin, produced during dredging shall be disposed of within the disposal site TH070 South Falls (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal at this site.

21. The material to be disposed of within the disposal site referred to in condition 20 must be placed within the boundaries of that site

22. During the course of disposal, material must be distributed evenly over the disposal site.

PART 3

PROCEDURE FOR THE DISCHARGE OF CONDITIONS

Meaning of "application"

23. In this Part, "application" means a submission by the licence holder for approval by the MMO of any construction method statement or plan under conditions 10 and 11.

Further information regarding application

24. The MMO may request in writing such further information from the licence holder as is necessary to enable the MMO to consider the application.

Determination of application

25.—(1) In determining the application the MMO may have regard to—

(a) the application and any supporting information or documentation;

(b) any further information provided by the licence holder in accordance with paragraph 11; and

(c) such other matters as the MMO thinks relevant.

(2) Having considered the application the MMO must—

(a) grant the application unconditionally;

(b) grant the application subject to the conditions as the MMO thinks fit; or

(c) refuse the application.

Notice of determination

26.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the licence holder of the determination of the application as soon as reasonably practicable after the application is received by the MMO.

(2) Where the MMO has made a request under condition 24, the MMO must give notice to the licence holder of the determination of the application as soon as reasonably practicable once the further information is received.

(3) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

SCHEDULE 10 Articles 4, 9, 34, 43, 54 and 57

PROTECTIVE PROVISIONS

PART 1

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

1. The provisions of this Part of this Schedule have effect for the protection of statutory undertakers unless otherwise agreed in writing between the Company and the statutory undertaker in question.

2. In this Part of this Schedule—

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

"apparatus" means—

(a) in the case of a statutory undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;

(b) in the case of a statutory undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply;

(c) in the case of a statutory undertaker within paragraph (c) of the definition of that term—

(i) mains, pipes or other water apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply; and

(ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991(**b**); and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the sewerage 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) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act(**c**),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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 in each case 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;

(**a**) 1989 c. 29.

(**b**) 1991 c. 56. Section 51A was inserted by section 92(1) of the Water Act 2003 (c. 37), and subsequently amended by section 10(1) and (2) of the Water Act 2014 (c. 21).

(**c**) Section 102(4) was amended by section 96(1)(c) to (e) and (3) of the Water Act 2003. Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003, section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014.

"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

"statutory undertaker" means—

(a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(**a**);

(c) a water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 (preliminary) 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 Company and the statutory undertaker are regulated by Part 3 (street works in England and Wales) of the 1991 Act.

4.—(1) Regardless of the temporary stopping up, alteration or diversion of streets under the powers conferred by article 13 (temporary stopping up and restriction of use of streets), a statutory 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 temporary stopping up, alteration or diversion was in that street.

(2) Where any street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), any statutory undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the Company must grant to the statutory undertaker legal easements reasonably satisfactory to the statutory undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the Company or of the statutory undertaker to require the removal of that apparatus under paragraph 6 or to carry out works under paragraph 8.

5. Despite any provision in this Order or anything shown on the land, special category land and crown land plans, the Company must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the Company 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 statutory undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a statutory 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 statutory undertaker in question in accordance with sub-paragraphs (2) to (8).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, the Company must give to the statutory undertaker in question 28 days' 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 statutory undertaker reasonably needs to remove any of its apparatus) the Company must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Company and subsequently for the maintenance of that apparatus.

(**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) and Part 1 of Schedule 23 to the Energy Act 2004 (c. 20). There are further amendments to section 7 but none are relevant.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the Company, or the Company 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 statutory undertaker in question must, on receipt of a written notice to that effect from the Company, as soon as reasonably practicable 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 Company under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the Company or in default of agreement settled by arbitration in accordance with article 60 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 60, and after the grant to the statutory 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 Company to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the Company gives notice in writing to the statutory 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 Company, that work, instead of being executed by the statutory undertaker, may be executed by the Company in accordance with plans and in a position agreed between the statutory undertaker and the Company or, in default of agreement, determined by arbitration in accordance with article 60, without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(7) In carrying out any work under sub-paragraph (6), the Company must comply with all statutory obligations which would have been applicable had the works been carried out by the statutory undertaker.

(8) Nothing in sub-paragraph (6) authorises the Company 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 600 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the Company 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 Company and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 60.

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

(a) give effect to all reasonable requirements of the Company for ensuring the safety and efficient operation of the tunnels and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Company; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in, under, over or above the tunnels for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the Company 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 statutory 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 Company to that statutory

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 authorised by this Order that will or may affect any apparatus the removal of which has not been required by the Company under paragraph 6(2), the Company must submit to the statutory 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 statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

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

(5) Nothing in this paragraph precludes the Company 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 Company is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory 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.

(7) Nothing in sub-paragraph (6) entitles the Company to carry out works to any apparatus but, upon receipt of notice from the Company, the statutory undertaker must proceed to carry out such works as may be required without unnecessary delay.

9.—(1) Subject to the following provisions of this paragraph, the Company must repay to the statutory undertaker in question the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with the inspection, removal, relaying, replacing, alteration or protection of any apparatus under any provision of this Part of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of facilities and rights or exercise of statutory powers for such apparatus) including the cutting off of any apparatus from any other apparatus or the making safe of any redundant apparatus as a consequence of the exercise by the Company of any power under this Order and the surveying of any land or works, the inspection, superintendence and monitoring of works or the removal of any temporary works reasonably necessary in consequence of the exercise of the Company of any power under this Order.

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

(3) If in accordance with 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 Company or, in default of

agreement, is not determined by arbitration in accordance with article 60 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 statutory 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; 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 statutory undertaker in respect of works by virtue of sub-paragraph (1) must, 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 statutory undertaker in question 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.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure 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 statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the Company must—

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

(b) indemnify the statutory undertaker against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or reasonably and properly incurred by, the statutory undertaker,

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

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

(3) A statutory undertaker must give the Company reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Company 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. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the Company must provide such alternative means of access to that apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and the operator.

(2) In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code(**b**);

"the electronic communications code" has the same meaning as in section 106(1) (application of the electronic communications code) of the 2003 Act(**c**);

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure 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 (application of the electronic communications code) 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;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

13. The exercise of the powers of article 34 (statutory undertakers) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

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 Company 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 Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the Company 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 Company 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 Company and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 60.

15. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the Company and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

---

(**a**) 2003 c. 21.
(**b**) See paragraph 5 of Schedule 3A (the electronic communications code) to the Communications Act 2003 (c. 21). Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).
(**c**) Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

PART 3

FOR THE PROTECTION OF THE PORT OF LONDON AUTHORITY

16. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and the PLA, for the protection of the PLA in relation to the construction and maintenance of the authorised development.

Definitions

17. In this Part of this Schedule—

"construction" includes execution, placing, altering, replacing, relaying and renewal and, in its application to a specified work which includes or comprises any operation, means the carrying out of that operation, and "construct" and "constructed" have corresponding meanings;

"core information" means the information (including information comprised in plans) regarding specified works or specified functions that the PLA may from time to time prescribe as being required to accompany any submission of plans for approval under paragraph 18, such information being that which the PLA publishes on its website from time to time as being required to accompany an application for a works licence under section 66 (licensing of works) or, as the case may be, an application for a licence to dredge under section 73(**a**) (licensing of dredging, etc.) of the 1968 Act;

"plans" includes navigational risk assessments, plans, sections, elevations, drawings, specifications, programmes, construction methods and descriptions including, where applicable, such relevant hydraulic information about the river Thames as may be reasonably requested by the PLA;

"specified function" means—

(a) any function of the Company under this Order (except any function under article 23 (compulsory acquisition of land), 25 (compulsory acquisition of rights) or 26 (acquisition of subsoil or airspace only)); and

(b) any function conferred by the following provisions of the 1968 Act applied to the extended port limits under article 4(1) (application of enactments relating to the Port of Tilbury)—

(i) section 120(1) to (5) and (7) (power to raise and remove vessels sunk, etc.); and

(ii) section 121(**b**) (removal of obstructions other than vessels); and

(c) any function under section 252 (powers of harbour and conservancy authorities in relation to wrecks) of the Merchant Shipping Act 1995(**c**),

the exercise of which may affect the river Thames or any function of the PLA; and

"specified work" means any part of the authorised development (which for this purpose includes the removal of any part of the authorised development), which—

(a) is, may be, or takes place in, on, under or over the surface of land below mean high water level forming part of the river Thames; or

(b) may affect the river Thames or any function of the PLA,

including any projection over the river Thames by any authorised work or any plant or machinery.

(**a**) As amended by section 46 of the Criminal Justice Act 1982 (c. 48).
(**b**) As amended by S.I. 1986/1.
(**c**) 1995 c. 21. As amended by section 11 of the Marine Navigations Act 2013 (c. 23).

Approval of detailed design

18.—(1) The Company must not commence the construction of any specified work or the exercise of any specified function until plans of the work or function have been approved in writing by the PLA.

(2) The Company must submit to the PLA plans of the specified work or specified function together with all relevant core information and must thereafter provide such further particulars as the PLA may, within 20 business days starting with the day on which plans are submitted under this sub-paragraph, reasonably require, and the particulars so supplied are to provide all information necessary to enable the PLA to determine whether approval should be given and, if so, whether conditions should be imposed.

(3) Any approval of the PLA required under this paragraph must not be unreasonably withheld but may be given subject to such reasonable modifications, terms and conditions as the PLA may make for the protection of—

(a) traffic in, or the flow or regime of, the river Thames;

(b) the use of its land, or the river Thames, for the purposes of performing its functions; or

(c) the performance of any of its functions connected with environmental protection.

(4) Requirements made under sub-paragraph (3) may include conditions as to—

(a) the proposed location of any temporary work and its dimensions or the location where the specified function is proposed to be exercised;

(b) the programming of temporary works or the exercise of the specified function;

(c) the removal of any temporary work and the undertaking by the Company of any related work or operation that the PLA considers to be necessary for the purpose of removing or preventing any obstruction to navigation;

(d) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the specified work or specified function; and

(e) the expiry of the approval if the Company does not commence construction or carrying out of the approved specified work or exercise of the specified function within a prescribed period.

(5) Subject to sub-paragraph (6), an application for approval under this paragraph is deemed to have been refused if it is neither given nor refused—

(a) in the case of an application for approval under article 43 (power to dredge), within 40 business days of the paragraph 18 specified day; and

(b) in any other case, within 30 business days of that day.

(6) An approval of the PLA under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (5) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

(7) The Company must carry out all operations for the construction of any specified work or the specified function without unnecessary delay and to the reasonable satisfaction of the PLA so that traffic in, or the flow or regime of, the river Thames, and the exercise of the PLA's functions, do not suffer more interference than is reasonably practicable. The PLA is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey those operations and the Company must provide all reasonable facilities to enable that inspection and survey to take place.

(8) In this paragraph "the paragraph 18 specified day" means, in relation to any specified work or specified function—

(a) the day on which plans and sections of that work or function are submitted to the PLA under sub-paragraph (1); or

(b) the day on which the Company provides the PLA with all further particulars of the work or function that have been requested by the PLA under that sub-paragraph,

whichever is the later.

As built drawings

19. As soon as reasonably practicable following the completion of the construction of the authorised development, the Company must provide to the PLA as built drawings of any specified works in a form and scale to be agreed between the Company and the PLA to show the position of those works in relation to the river Thames.

Discharges, etc.

20.—(1) The Company must not without the consent of the PLA exercise the powers conferred by article 18 (discharge of water) so as to—

(a) deposit in or allow to fall or be washed into the river Thames any gravel, soil or other material;

(b) discharge or allow to escape either directly or indirectly into the river Thames any offensive or injurious matter in suspension or otherwise; or

(c) directly or indirectly discharge any water into the river Thames.

(2) Any consent of the PLA under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the PLA may reasonably impose.

(3) Any consent under this paragraph is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

21. The Company must not, in exercise of the powers conferred by article 18 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river Thames unless such damage or interference is approved as a specified work under this Order or is otherwise approved in writing by the PLA.

Navigational lights, buoys, etc.

22.—(1) The Company must, at or near a specified work, a structure which remains in the river Thames by virtue of article 3(4) or 3(5) (disapplication of legislation, etc.) or a location where a specified function is being exercised, exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the PLA may from time to time reasonably require.

(2) The PLA must give the Company not less than 20 business days' written notice of a requirement under sub-paragraph (1) except in the case of emergency when the PLA must give such notice as is reasonably practicable.

Directions as to lights

23. The Company must comply with any reasonable directions issued from time to time by the PLA Harbour Master with regard to the lighting of—

(a) a specified work or a structure which remains in the river Thames by virtue of article 3(4) or 3(5) (disapplication of legislation, etc.); or

(b) the carrying out of a specified function or the use of apparatus for the purposes of such a function,

or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river Thames.

Permanent lights on tidal works

24. After the completion of a specified work the Company must at the outer extremity of that work exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the PLA may from time to time direct.

Removal, etc. of the PLA's moorings and buoys

25.—(1) Subject to sub-paragraph (2), if by reason of the construction of any specified work or the exercise of any specified function it is reasonably necessary for the PLA to incur the cost of—

(a) temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the PLA;

(b) laying down and removing substituted moorings or buoys; or

(c) carrying out dredging operations for any such purpose,

not being costs which it would have incurred for any other reason, the Company must pay the costs reasonably so incurred by the PLA.

(2) The PLA must give to the Company not less than 20 business days' notice of its intention to incur such costs, and take into account any representations which the Company may make in response to the notice within 10 business days of the receipt of the notice.

Sedimentation, etc. remedial action

26.—(1) This paragraph applies if any part of the river Thames has become or is likely to become subject to sedimentation, scouring or other changes in the flow or regime of the river Thames which—

(a) is wholly or partly caused by a specified work or a specified function during the period beginning with the commencement of construction of the work or function and (subject to sub-paragraph (4)) ending with the expiration of six years after the date of completion of all the specified works comprised in the authorised development; and

(b) for the safety of navigation or for the protection of any works in the river Thames, should in the reasonable opinion of the PLA be removed or made good.

(2) Subject to sub-paragraph (3) the Company must either—

(a) pay to the PLA any additional expense to which the PLA may reasonably be put in dredging the river Thames to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to either or both the specified work and the specified function; or

(b) carry out the necessary dredging or work to make good the scouring at its own expense and subject to the prior approval of the PLA which may be subject to reasonable conditions but which may not be unreasonably withheld or delayed,

and the expenses payable by the Company under this sub-paragraph include any additional expenses accrued or incurred by the PLA in carrying out surveys or studies which may be agreed with the Company in connection with the implementation of this paragraph.

(3) If it is established that the sedimentation, scouring or other changes in the flow or regime of the river Thames was partly caused by a specified work or a specified function and partly by another factor, the Company's liability under sub-paragraph (2) is apportioned accordingly.

(4) At any time before the expiry of the period of six years after the date of completion of all the specified works comprised in the authorised development ("the completion date") the PLA may serve notice on the Company stating that in the opinion of the PLA the river Thames or any part of it may, after the expiry of that period, become subject to sedimentation, scouring or other changes in its flow or regime wholly or partly caused by a specified work or specified function. Any such notice must specify—

(a) the additional period (not exceeding 10 years after the completion date) during which the provisions of sub-paragraphs (1) and (2) ought to apply; and

(b) the PLA's reasons for reaching that opinion.

(5) On receipt of any such notice the Company may serve a counter-notice within 30 business days beginning on the day the notice was received, such notice to include details of the

Company's objection to the PLA's notice or any conditions it may wish to impose on compliance by the Company with the PLA's notice.

(6) In the event that the PLA and the Company cannot agree the matters raised in the PLA's notice and the Company's counter-notice within two months from the service of the Company's counter-notice, either party may refer the matter to arbitration under paragraph 37.

(7) If the Company fails to serve a counter-notice or if it serves a counter-notice and the matter is either agreed between the PLA and the Company or determined pursuant to sub-paragraph (6), then the provisions of sub-paragraphs (1) and (2) will apply during such additional period as is specified in the PLA's notice or as may be so agreed or determined.

Removal of temporary works

27.—(1) On completion of the construction of the whole or any part of a permanent specified work, the Company must—

(a) as soon as reasonably practicable after such completion seek approval under paragraph 18 for the removal required by sub-paragraph (b); and

(b) as soon as reasonably practicable after the grant of that approval under paragraph 18 remove—

(i) in the case of completion of part, any temporary tidal work (other than a residual structure) carried out only for the purposes of that part of the permanent specified work;

(ii) on completion of all the specified works, any remaining temporary tidal work (other than a residual structure); and

(iii) in either case, any materials, plant and equipment used for such construction,

and make good the site to the reasonable satisfaction of the PLA.

(2) For the purposes of the Company making good the site in accordance with sub-paragraph (1)(b), the PLA may require that—

(a) any residual structure is cut off by the Company at such level below the bed of the river Thames as the PLA may reasonably direct; and

(b) the Company takes such other steps to make the residual structure safe as the PLA may reasonably direct.

(3) As soon as reasonably practicable after the Company has complied with the PLA's requirements under sub-paragraphs (1) and (2) in relation to any residual structure, the PLA will grant the Company a works licence for that structure under section 66 (licensing of works) of the 1968 Act, and the terms of the licence are to reflect such requirements.

(4) For the avoidance of doubt, article 3 (disapplication of legislation, etc.) will not apply to a residual structure which will, accordingly, be subject to sections 66 to 75 of the 1968 Act.

(5) In this paragraph—

"residual structure" means any part of a temporary tidal work that the PLA agrees cannot reasonably be removed by the Company on completion of the construction of the permanent specified works; and

"tidal work" means any specified work any part of which is, or may be, or, in, under or over the surface of land below mean high water level forming part of the river Thames.

Protective action

28.—(1) If any specified work or the exercise of any specified function—

(a) is constructed or carried out otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given under paragraph 18(4); or

(b) during construction or carrying out gives rise to sedimentation, scouring, currents or wave action, which would be materially detrimental to traffic in, or the flow or regime of, the river Thames,

then the PLA may by notice in writing require the Company at the Company's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

(a) in the case of a specified work or specified function to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—

(i) this Part of this Schedule; or

(ii) the condition that has been breached; or

(b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river Thames.

(3) If the Company does not comply with a notice under sub-paragraph (1), or is unable to do so then the PLA may in writing require the Company to—

(a) remove, alter or pull down the specified work, and where the specified work is removed to restore the site of that work (to such extent as the PLA reasonably requires) to its former condition; or

(b) take such other action as the PLA may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a specified work gives rise to environmental impacts over and above those anticipated by any environmental document, the Company must, in compliance with its duties under any enactment, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing must consult and seek to agree the necessary measures with the PLA.

(5) If the PLA becomes aware that any specified work is causing an environmental impact over and above those anticipated by any environmental document, the PLA must notify the Company of that environmental impact, the reasons why the PLA believes that the environmental impact is being caused by the specified work and of measures that the PLA reasonably believes are necessary to counter or mitigate that environmental impact. The Company must implement either the measures that the PLA has notified to the Company or such other measures as the Company believes are necessary to counter the environmental impact identified, giving reasons to the PLA as to why it has implemented such other measures.

(6) In this paragraph "environmental document" means-

(a) the environmental statement; and

(b) any other document containing environmental information provided by the Company to the PLA for the purposes of any approval under paragraph 18.

Abandoned or decayed works

29.—(1) If a specified work or a structure which remains in the river Thames by virtue of article 3(4) or 3(5) (disapplication of legislation, etc.) is abandoned or falls into decay, the PLA may by notice in writing require the Company to take such reasonable steps as may be specified in the notice either to repair or restore the specified work or structure, or any part of it, or to remove the specified work or structure and (to such extent and within such limits as the PLA reasonably requires) restore the site of that work to its condition prior to the construction of the specified work.

(2) If any specified work or structure which remains in the river Thames by virtue of article 3(4) or 3(5) is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river Thames, the PLA may by notice in writing require the Company to take such reasonable steps as may be specified in the notice—

(a) to repair and restore the work or structure or part of it; or

(b) if the Company so elects, to remove the specified work and (to such extent as the PLA reasonably requires) to restore the site to its former condition.

(3) If on the expiration of such reasonable period as may be specified in a notice under this paragraph the work specified in the notice has not been completed to the satisfaction of the PLA, the PLA may undertake that work and any expenditure reasonably incurred by the PLA in so doing is recoverable from the Company.

Facilities for navigation

30.—(1) The Company must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river Thames without the consent of the PLA, and must ensure that access to such aids remains available during and following construction of any specified work or the exercise of any specified function.

(2) The Company must provide at any specified work, or must afford reasonable facilities at such work (including an electricity supply) for the PLA to provide at the Company's cost, from time to time such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the PLA may deem necessary by reason of the construction and presence of the specified work and must ensure access remains available to such facilities during and following construction of the specified work.

Survey of riverbed

31.—(1) The PLA may, at the Company's expense (such expense to be that which is reasonably incurred), carry out a survey (or externally procure the carrying out of a survey) for the purpose of establishing the condition of the river Thames—

(a) before the commencement of construction of the first specified work below mean high water level to be constructed following approval under paragraph 18;

(b) before the commencement of construction of any other specified work, or the carrying out of any other specified function, approved under paragraph 18;

(c) during the construction of any specified work, or the carrying out of any specified function, as is reasonably required; and

(d) after completion of, respectively—

(i) any specified work and the exercise of all related specified functions; and

(ii) all the specified works constructed and specified functions carried out under this Order in relation to such construction,

of such parts of the river Thames as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of the relevant specified work, or the carrying out of a specified function as would, if it were to be constructed or carried out, constitute specified works, or give rise to operations, below mean high water level.

(2) The PLA must make available to the Company the results of any survey carried out under this paragraph.

(3) The PLA must not under this paragraph carry out a survey of any part of the river Thames in respect of which the Company has provided to the PLA survey material which the PLA is satisfied establishes the condition of the river Thames, and in the case of a survey under sub-paragraph (1)(c), the effect of the specified works and the specified functions.

(4) A survey carried out under this paragraph is the property of the PLA.

Consideration for dredged material

32.—(1) The Company must pay to the PLA for material dredged by the Company under this Order from so much of the river Thames of which the freehold is vested in the PLA, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The Company must pay consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the authorised development based on the quantity of such material that—

(a) is not used for the construction of the authorised development; and

(b) is sold by the Company or by any other person exercising any powers under this Order.

Restriction on powers of compulsory acquisition

33. Nothing contained in Part 3 (powers of acquisition and possession of land) of this Order authorises the acquisition of any interest in, or the acquisition or extinguishment of any right in, on or over, any Order land if the interest or right is at the time of the proposed acquisition vested in the PLA.

Protection for the PLA's functions

34.—(1) Subject to article 3 (disapplication of legislation, etc.) the exercise in, under or over the river Thames by the Company of any of its functions under this Order is subject to—

(a) any enactment relating to the PLA;

(b) any byelaw, direction or other requirement made by the PLA or the PLA Harbour Master under any enactment; and

(c) any other exercise by the PLA or the PLA Harbour Master of any function conferred by or under any enactment.

(2) The Company's dockmaster must not give or enforce any special direction to any vessel under section 112(1)(b) (special directions to vessels in the Thames) of the 1968 Act, or enforce such a direction under section 118 (enforcement of directions) of that Act, if to do so would conflict with a special direction given to the same vessel by the PLA Harbour Master.

(3) The Company must not take any action in the river Thames in relation to the removal from the extended port limits of any vessel or other thing except with the consent of the PLA Harbour Master, which must not be unreasonably withheld.

Indemnity

35.—(1) The Company is responsible for and must make good to the PLA all financial costs, charges, damages, losses or expenses which may be incurred reasonably or suffered by the PLA by reason of—

(a) the construction or operation of a specified work or its failure;

(b) the exercise of any specified function; or

(c) any act or omission of the Company, its employees, contractors or agents or others whilst engaged on the construction or operation of a specified work or exercise of a specified function dealing with any failure of a specified work,

and the Company must indemnify the PLA from and against all claims and demands arising out of or in connection with the specified works or specified functions or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

(a) by the PLA on behalf of the Company; or

(b) by the Company, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the PLA, or in a manner approved by the PLA, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the PLA or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this paragraph.

(3) The PLA must give the Company reasonable notice of any such claim or demand as is referred to in sub-paragraph (1) and no settlement or compromise of it is to be made without the prior consent of the Company.

Disposals, etc.

36. The Company must within 7 days after the completion of any sale, agreement or other transaction under article 51 (consent to transfer benefit of Order) in relation to which any powers, rights and obligations of the Company are transferred to another party, notify the PLA in writing, and the notice must include particulars of the other party to the transaction under article 51, the general nature of the transaction and details of the extent, nature and scope of the works or functions sold, transferred or otherwise dealt with.

Disputes

37. Subject to any protocol agreed in writing by the parties, any dispute arising between the Company and the PLA under this Part of this Schedule is to be determined by arbitration as provided in article 60 (arbitration).

PART 4

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

38. The provisions of this Part of this Schedule apply for the protection of the Environment Agency unless otherwise agreed in writing between the Company and the Agency, in relation to construction of the authorised development and, within any maintenance period defined in article 33 (temporary use of land for maintaining the authorised development), any maintenance of any part of the authorised development.

Definitions

39. In this Part of this Schedule—

"the Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying, removal and excavation, and "construct" and "constructed" is to be construed accordingly;

"damage" includes (but is not limited to) scouring, erosion, loss of structural integrity and environmental damage to any drainage work or any flora or fauna dependent on the aquatic environment, and "damaged" is to be construed accordingly;

"drainage work" means any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring or flood storage capacity;

"environmental duties" means the Agency's duties in the Environment Act 1995(**a**), the Natural Environment and Rural Communities Act 2006(**b**) and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(**c**);

"fishery" means any waters containing fish and fish in, or migrating to or from such waters and the spawn, spawning grounds or food for such fish;

"flood defence" means any bank, wall, embankment, bridge abutments, lock gates or other structure or any appliance (including any supporting anchorage system) that fulfils a function of preventing, or reducing the risk of, flooding to land or property;

(**a**) 1995 c. 25.
(**b**) 2006 c. 16,
(**c**) S.I. 2017/407.

"flood storage capacity" means any land, which, taking account of the flood defences, is expected to provide flood storage capacity for any main river;

"main river" means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment, Food and Rural Affairs, including any structure or appliance for controlling or regulating the flow of water into, in or out of the channel;

"maintenance" has the same meaning as in article 2 (interpretation), save for the exclusion of the works of inspection;

"plans" includes sections, drawings, specifications, associated pre-construction ground investigation methodologies and method statements; and

"specified work" means so much of any permanent or temporary work or operation forming part of the authorised development (other than works required in an emergency) as is in, on, under or over a main river or drainage works or within 16 metres of a drainage work or is otherwise likely to—

(a) affect any drainage works or the volumetric rate of flow of water in or flowing to or from any drainage works;

(b) affect the flow, purity or quality of water in any main river or other surface waters or ground water;

(c) cause obstruction to the free passage of fish or damage to any fishery;

(d) affect the conservation, distribution or use of water resources; or

(e) affect the conservation value of the main river and habitats in its immediate vicinity.

Dredging

40.—(1) The Company must consult the Agency as soon as reasonably practicable before applying to the PLA for consent to any dredging under Part 3 (for the protection of the Port of London Authority) of this Schedule and in doing so the Company must allow the Agency 28 days to respond to the consultation.

(2) Subject to sub-paragraph (1), nothing in this Part of this Schedule applies to dredging carried out under the powers of this Order.

Specified works

41.—(1) Before commencing construction of a specified work (excluding any piling works which comprise a "licensable marine activity" as defined in the 2009 Act), the Company must submit to the Agency for its written approval—

(a) plans of the specified work together with the details of the positioning of any structure within the main river; and

(b) such further particulars as the Agency may within 20 business days of the receipt of the detailed designs reasonably require.

(2) Any submission made by the Company under sub-paragraph (1), and any approval given by the Agency under this paragraph, may be in respect of all or part of a specified work.

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency under sub-paragraph (1), or settled in accordance with paragraph 48 where applicable, and in accordance with any reasonable conditions or requirements specified under this paragraph.

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

(a) must not be unreasonably withheld;

(b) is deemed to have been refused if it is neither given nor refused within 8 weeks of the submission of the plans or within 4 weeks of the receipt of further particulars if such particulars have been required by the Agency for approval;

(c) in the case of a refusal, must be accompanied by a statement of the grounds of refusal; and

(d) may be given subject to such reasonable requirements or conditions as the Agency may make for the protection of any drainage work, flood defence, fishery, main river or water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

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

(6) Without limitation on the scope of sub-paragraph (4)(d) the requirements or conditions which the Agency may make under that sub-paragraph include conditions requiring the Company at its own expense to construct such protective works (including any new works as well as alterations to existing works) whether temporary or permanent before or during construction of the specified work (including provision of flood banks, walls or embankments or other new works and the strengthening, repair or removal of banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work or flood defence against damage;

(b) to secure that its efficiency or effectiveness for flood defence purposes is not impaired; or

(c) to ensure the risk of flooding is not otherwise increased by reason of any specified work, maintenance work or protective work,

during the construction of or by reason of any specified work.

(7) Any dispute in respect of any approval or refusal under this paragraph is subject to the dispute resolution procedure in paragraph 48.

Construction and inspection

42.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 41 must be constructed—

(a) without unnecessary or unreasonable delay;

(b) in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(c) to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) The Company must give to the Agency not less than 10 business days' notice in writing of its intention to commence construction of any specified work and notice in writing of its having been brought into use not later than five business days after the date on which it has been completed.

(3) If the Agency reasonably requires, the Company must construct all or part of any protective works so that they are in place prior to the carrying out of any specified work to which they relate.

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

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

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the

reasonableness of any requirement of such a notice, the Agency must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

Maintenance of drainage works

43.—(1) Subject to sub-paragraph (5), the Company must from the commencement of the construction of a specified work until its completion ("the maintenance period"), maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the Company for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the Company is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Company, or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

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

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

(5) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of this Order from doing so; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

Alternative access

44. If by reason of construction of any specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Company must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 72 hours of the Company becoming aware of such obstruction.

Emergency powers

45.—(1) Subject to sub-paragraph (2), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Company to the reasonable satisfaction of the Agency.

(2) If such impaired or damaged drainage work is not made good to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Company to restore it to its former standard of efficiency or where necessary to construct some other work in substitution for it.

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

(4) In any case where immediate action by the Agency is reasonably required in order to secure that imminent flood risk or damage to the environment is avoided or reduced, the Agency may take such steps as are reasonable for the purpose and may recover from the Company the reasonable cost of so doing.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (1), the Agency must not except in a case of immediate foreseeable need exercise the powers conferred by sub-paragraph (1) until the dispute has been finally determined in accordance with paragraph 48.

Free passage of fish

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

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

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

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so provided that the notice specifying those steps is served on the Company as soon as is reasonably practicable after the Agency has taken, or commenced to take the steps specified in the notice.

Indemnities and Costs

47.—(1) The Company must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

(2) Without affecting the other provisions of this Part of this Schedule, the Company must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be reasonably made or taken against, recovered from, or reasonably incurred by, the Agency by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any damage to the fishery;

(c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;

(d) any flooding or increased flooding of any such lands; or

(e) inadequate water quality in any water in any watercourse or other surface waters or in any groundwater,

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

(3) The Agency must give to the Company reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the Company.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that imminent flood risk or damage to the environment is avoided or reduced, the Agency may take such steps as are reasonable for the purpose and may recover from the Company the reasonable cost of so doing.

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

Dispute resolution

48. Any difference or dispute arising between the Company and the Agency under this Part of this Schedule is to be determined by arbitration in accordance with article 60 (arbitration) of the Order unless otherwise agreed in writing between the Company and the Agency, except that where there is no agreement between the parties the arbitrator is to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State for the Environment and the Secretary of State for Transport acting jointly.

PART 5

FOR THE PROTECTION OF THURROCK COUNCIL (AS LEAD LOCAL FLOOD AUTHORITY)

49. The provisions of this Part of this Schedule apply for the protection of Thurrock Council unless otherwise agreed between the Company and Thurrock Council.

50. In this Part of this Schedule—

"construction" includes execution, placing, altering, laying, replacing, relaying, connecting, building, installing, removal and excavation, and "construct" and "constructed" are to be construed accordingly;

"drainage work" means any ordinary watercourse and includes any land which is expected to provide flood storage capacity for an ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse;

"ordinary watercourse" has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991(**a**);

"plans" includes sections, drawings, specifications and method statements; and

"specified work" means any of the following works carried out in relation to or which may affect any ordinary watercourse—

(a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;

(b) construction or installation of a bridge or other structure;

(c) installing a culvert in the watercourse; or

(d) altering a watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of the watercourse.

51.—(1) Before beginning to construct any specified work, the Company must submit to Thurrock Council plans of the work, and such further particulars as Thurrock Council may within 28 days of receipt of the plans reasonably require.

(**a**) 1991 c. 59. There are amendments to section 72 but none are relevant.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by Thurrock Council, or determined under paragraph 59.

(3) Thurrock Council must approve or refuse approval of the plans for a specified work within—

(a) two months of receipt under sub-paragraph (1); or

(b) two months of receipt of such further particulars as Thurrock Council may require under sub-paragraph (1).

(4) Any approval of Thurrock Council required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is to be deemed to have been given if it is neither given nor refused within two months of receipt of the plans for approval or where further particulars are received under sub-paragraph (1), within two months of the receipt of those particulars; and

(c) may be given subject to such reasonable requirements or conditions as Thurrock Council may make for the protection of any ordinary watercourse or for the prevention of flooding.

52. The requirements or conditions which Thurrock Council may make under paragraph 51 include conditions requiring the Company at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

(a) to safeguard any ordinary watercourse against damage, or

(b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, nor land drainage impaired,

by reason of the specified work.

53.—(1) Any specified work, and all protective works required by Thurrock Council under paragraph 51, must be constructed to the reasonable satisfaction of Thurrock Council and an officer of Thurrock Council is entitled, on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The Company must give to Thurrock Council not less than 14 days' notice of its intention to commence construction of any specified work (except in the case of specified work which is also a specified work for the purposes of Part 7 (for the protection of Thurrock Council (as highway authority)) of this Schedule or a specified work which directly affects an existing highway, in which case the Company must give not less than three months' notice) and the Company must give to Thurrock Council notice of completion of a specified work not later than 7 days after the date on which it is brought into use.

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

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, Thurrock Council may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the Company.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, Thurrock Council must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

54.—(1) From the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work ("the maintenance period"), the Company must at its expense, maintain in good repair and condition and free from obstruction the drainage work which is situated within the limits of deviation for that specified work and within land held or occupied by the Company, whether the drainage work is constructed under this Order or is already in existence.

(2) If any such drainage work is not maintained to the reasonable satisfaction of Thurrock Council, it may by notice require the Company to maintain the drainage work at the Company's expense, or any part of it, to such extent as Thurrock Council reasonably requires.

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

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), Thurrock Council must not, except in a case of emergency, exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

55. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the Company at its own expense to the reasonable satisfaction of Thurrock Council and if the Company fails to do so, Thurrock Council may make good the same and recover from the Company the expense reasonably incurred by it in doing so.

56.—(1) The Company must indemnify Thurrock Council in respect of all losses, expenses, actions, liabilities, costs, charges, claims, demands, proceedings, damages and expenses which it may reasonably incur or which it may sustain—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection and supervision of the construction of a specified work in respect of an ordinary watercourse or any protective works required by Thurrock Council under this Part of this Schedule.

(2) The maximum amount payable to Thurrock Council under sub-paragraph (1)(a) or (1)(b) is to be the same as would have been payable to Thurrock Council in accordance with the scale of charges for pre-application advice and land drainage consent applications published on Thurrock Council's website from time to time.

57.—(1) Regardless of the other provisions of this Part of this Schedule, but subject to paragraph 56, the Company must, within 28 days of receiving written notification from Thurrock Council, indemnify Thurrock Council from all losses, expenses, actions, charges, costs, liabilities, claims, demands, proceedings or damages, which may be incurred, made or taken against, or recovered from Thurrock Council by reason of—

(a) any damage to any ordinary watercourse so as to impair its efficiency for flood defence or land drainage purposes;

(b) any raising or lowering of the water table in land adjoining or affected by a specified work or adjoining any sewers, drains and watercourses;

(c) any flooding, increased flooding or impaired drainage of any such lands as are mentioned in paragraph (b);

(d) any claim in respect of pollution under the 1974 Act;

(e) damage to property including property owned by third parties; or

(f) injury to or death of any person,

which is caused by, or results from, the construction and maintenance of any specified work or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the specified work.

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

58. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to have been approved by Thurrock Council, or to its satisfaction, does not (in the absence of negligence on the part of Thurrock Council, its officers, contractors or agents) relieve the Company from any liability under the provisions of this Part of this Schedule.

59. Any dispute arising between the Company and Thurrock Council under this Part of this Schedule is to be determined by arbitration in accordance with article 60 (arbitration) of the Order.

PART 6

FOR THE PROTECTION OF RAILWAY INTERESTS

60. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and Network Rail and, in the case of paragraph 74, any other person on whom rights or obligations are conferred by that paragraph.

61. In this Part of this Schedule—

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

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

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of powers under section 8 (licences) of the Railways Act l993(**a**);

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

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

"railway property" means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

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

62.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network

(**a**) 1993 c. 43. As amended by paragraphs 1 and 4 of Schedule 17 to the Transport Act 2000 (c. 38), paragraphs 1 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 3 of Schedule 1, and Schedule 13, to the Railways Act 2005 (c. 14) and S.I. 2015/1682.

Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

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

(a) co-operate with the Company with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

63.—(1) The Company must not exercise the powers conferred by article 12 (permanent stopping up and restriction of use of highways and private means of access), article 13 (temporary stopping up and restriction of use of streets), article 14 (access to works), article 17 (level crossings), article 18 (discharge of water), article 20 (authority to survey and investigate land), article 21 (felling or lopping of trees and removal of hedgerows), article 23 (compulsory acquisition of land), article 25 (compulsory acquisition of rights), article 26 (acquisition of subsoil or airspace only), article 27 (private rights over land), article 28 (power to override easements and other rights), article 32 (temporary use of land for constructing the authorised development), article 33 (temporary use of land for maintaining the authorised development) and article 34 (statutory undertakers) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The Company must not exercise the powers conferred by sections 271 or 272(**a**) of the 1990 Act (extinguishment of rights of statutory undertakers etc.), as applied by article 34 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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

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

64.—(1) The Company must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 60 (arbitration).

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

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

(**a**) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

constructed, Network Rail must construct it without unreasonable delay on behalf of and to the reasonable satisfaction of the Company in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the Company.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the Company, if Network Rail so desires, and such protective works must be carried out at the expense of the Company in either case without unreasonable delay and the Company must not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed to the engineer's reasonable satisfaction.

65.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 64(4) must, when commenced, be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 64;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

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

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

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

66. The Company must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

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

68.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railways of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Company reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Company must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum

representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Company, Network Rail gives notice to the Company that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Company decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the Company must, notwithstanding any such approval of a specified work under paragraph 64(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 69(a) provide such details of the formula by which those sums have been calculated as the Company may reasonably require.

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

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

(a) in constructing any part of a specified work on behalf of the Company as provided by paragraph 64(3) or in constructing any protective works under the provisions of paragraph 64(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the Company and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

70.—(1) In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 64(1) for the relevant part of the authorised development giving rise to EMI (unless the Company has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the Company must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

(a) the Company must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 64(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the Company all information in the possession of Network Rail reasonably requested by the Company in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the Company reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 64(1) has effect subject to this sub-paragraph.

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

(7) In the event of EMI having occurred –

(a) the Company must afford reasonable facilities to Network Rail for access to the Company's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the Company for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the Company any additional material information in its possession reasonably requested by the Company in respect of Network Rail's apparatus or such EMI.

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

(a) Network Rail must allow the Company reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and

(b) such modifications must be carried out and completed by the Company in accordance with paragraph 65.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 74(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 69(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 60 (arbitration) to the Institution of Civil Engineers is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology.

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

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

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

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

(a) by reason of the construction or maintenance of a specified work or the failure thereof; or

(b) by reason of any act or omission of the Company or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

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

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

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

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

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

(6) In this paragraph—

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

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

75. Network Rail must, on receipt of a request from the Company, at a frequency to be agreed between the parties, provide the Company free of charge with written estimates of the costs, charges, expenses, future costs forecasts and other liabilities for which the Company is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 74) and with such information as may reasonably enable the Company to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

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

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

(a) any railway property shown on the works plans or land, special category land and crown land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

78. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

79. The Company must give written notice to Network Rail if any application is proposed to be made by the Company for the Secretary of State's consent, under article 51 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

80. The Company must no later than 28 days from the date that the documents submitted to and certified by the Secretary of State in accordance with article 58 (certification of documents) are certified by the Secretary of State, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

PART 7

FOR THE PROTECTION OF THURROCK COUNCIL (AS HIGHWAY AUTHORITY)

81. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and Thurrock Council.

82. In this Part of this Schedule—

"highway" means a street vested in or maintainable by Thurrock Council as highway authority under the 1980 Act;

"plans" includes sections, drawings, specifications and particulars (including descriptions of methods of construction); and

"specified work" means so much of any of the authorised development as forms part of or is intended to become a highway, or part of any such highway.

83. Without affecting the application of sections 59(**a**) (general duty of street authority to co-ordinate works) and 60(**b**) (general duty of undertakers to co-operate) of the 1991 Act, before commencing the construction of any specified work, the Company must submit to Thurrock Council for its approval proper and sufficient plans and must not commence the construction of a specified work until those plans have been approved or settled by arbitration.

84. When signifying approval of plans submitted under paragraph 83, Thurrock Council may specify any protective works (whether temporary or permanent) which in its opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of the highway and such protective works must be carried out at the expense of the Company.

85. If, within 28 days after any plans have been submitted to Thurrock Council under paragraph 83, it has not intimated its disapproval and the grounds of disapproval, Thurrock Council is deemed to have approved them.

86. In the event of any disapproval of plans by Thurrock Council under paragraph 83, the Company may re-submit the plans with modifications and, in that event, if Thurrock Council has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it is deemed to have approved them.

87. On submission of the plans for a specified work, the Company must pay Thurrock Council 2% of the anticipated cost of constructing the specified work to cover Thurrock Council's reasonable fees, costs, charges and expenses in approving the plans for and in supervising construction of the specified work.

88. Thurrock Council may apply to the Company for up to two further payments (limited in each case to a maximum of 2% of the anticipated cost of constructing the specified work) if it reasonably considers that its fees, costs, charges and expenses in approving plans for and supervising construction of the specified work will exceed the amount the Company must pay under paragraph 87.

89. The Company must use reasonable endeavours to agree to pay any amount sought by Thurrock Council under paragraph 88 (having regard to the extent of the outstanding work in respect of which Thurrock Council is likely to incur fees, costs, charges and expenses) and following agreement must pay any such amount.

90. The Company must repay to Thurrock Council all reasonable fees, costs, charges and expenses reasonably incurred by it (in approving the plans for and supervising construction of a specified work) which have not otherwise been covered by a payment made under paragraphs 87 to 89.

91. Thurrock Council must repay to the Company (or, with the Company's agreement, offset against any amounts for which the Company is otherwise liable to Thurrock Council) any payment or part of a payment made under paragraphs 87 to 90 which exceeds the fees, costs, charges and expenses it has incurred in approving plans for and in supervising the construction of a specified work and in response to a written request from the Company (served no earlier than after the final adoption of all of the specified works under article 10(1) to (4)) Thurrock Council must provide to the Company a financial summary containing detailed evidence of how the payments received by Thurrock Council under paragraphs 87 to 90 have been spent.

(**a**) As amended by section 42 of the Traffic Management Act 2004 (c. 18).
(**b**) As amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

92. The Company must not, except with the consent of Thurrock Council, deposit any soil, subsoil or materials or stand any vehicle or plant on any highway (except on so much of it as is for the time being temporarily stopped up or occupied under the powers conferred by this Order) so as to obstruct the use of the highway by any person or, except with the same consent, deposit any soil, subsoil or materials on any highway except within a hoarding.

93. Except in an emergency or where reasonably necessary to secure the safety of the public no direction or instruction may be given by Thurrock Council to the contractors, servants or agents of the Company regarding the construction of any specified work without the prior consent in writing of the Company; but Thurrock Council is not liable for any additional costs which may be incurred as a result of the giving of instructions or directions under this paragraph.

94. The Company must, if reasonably so required by Thurrock Council, provide and maintain during such time as the Company may occupy any part of a highway for any purpose connected to the construction of any part of the authorised development, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 1994 in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

95. Any specified work, and all protective works required by Thurrock Council under paragraph 84 must be constructed in accordance with approved plans and to the reasonable satisfaction of Thurrock Council and an officer of Thurrock Council is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works (such inspection and supervision being at the Company's expense).

96. The Company must give to Thurrock Council not less than three months' notice of its intention to commence construction of any specified work and the Company must give to Thurrock Council notice of completion of a specified work not later than 7 days after the date on which it is brought into operational use.

97. If any part of the specified works comprising a structure in, over or under any existing or intended highway is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Thurrock Council may by notice require the Company at its own expense to comply with the requirements of this Part of this Schedule or (if the Company so elects and Thurrock Council in writing consents, such consent not to be unreasonably withheld) at the Company's expense to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as Thurrock Council reasonably requires.

98. Subject to paragraph 99, if the Company has failed to begin taking steps to comply with the reasonable requirements of the notice under paragraph 96 and has not subsequently made reasonably expeditious progress towards their implementation within 28 days beginning with the day after the date on which the period specified in the notice given under paragraph 96 ends, Thurrock Council may construct the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the Company.

99. In the event of any dispute as to whether paragraph 97 is properly applicable to any work in respect of which notice has been served under that paragraph, or as to the reasonableness of any requirement of such a notice, Thurrock Council must not, except in an emergency, exercise the powers conferred by paragraph 97 until the dispute has been finally determined.

100. If any specified work is not maintained by the Company in accordance with article 10 (construction and maintenance of new, altered or diverted streets) to the reasonable satisfaction of Thurrock Council, it may by notice require the Company to maintain the work or any part of it in accordance with article 10 to such extent as Thurrock Council reasonably requires for as long as the obligation to maintain the specified work under article 10 applies.

101. If the Company has failed to begin taking steps to comply with the reasonable requirements of any notice issued under paragraph 100 and has not subsequently made reasonably expeditious progress towards their implementation within 28 days beginning with the date on which a notice in respect of any work is served on the Company, Thurrock Council may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

102. In the event of any dispute as to the reasonableness of any requirement of a notice served under paragraph 100, Thurrock Council must not except in a case of emergency exercise the powers of paragraph 101 until the dispute has been finally determined.

103. Regardless of the other provisions of this Part of this Schedule but subject to paragraph 104 the Company must, within 28 days of receiving written notification from Thurrock Council, indemnify Thurrock Council from all losses, expenses, actions, charges, cost, liabilities, claims, demands, proceedings or damages, which may be incurred, made or taken against, or recovered from Thurrock Council by, in connection with or incidental to a specified work including by reason of—

(a) the construction or maintenance of a specified work or the failure of the specified work;

(b) any subsidence of, or damage to, any highway or any retained sanitary convenience, refuge, sewer, drain, pipe, cable, wire, lamp column, traffic sign, bollard, bin for refuse or road materials or associated apparatus or any other property or work belonging to, or under the jurisdiction or control of, or maintainable by Thurrock Council or a statutory undertaker;

(c) any act or omission of the Company or of its agents, contractors, employees or servants whilst engaged upon a specified work;

(d) a claim in respect of noise nuisance or pollution under the 1974 Act;

(e) damage to property including property owned by third parties; or

(f) injury to or death of any person.

104. Thurrock Council must give to the Company reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the Company which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

105. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to have been approved by Thurrock Council, or to its satisfaction, does not (in the absence of negligence on the part of Thurrock Council, its officers, contractors or agents) relieve the Company from any liability under the provisions of this Part of this Schedule.

106. Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Thurrock Council, that approval or consent must be in writing and may be given subject to such reasonable terms and conditions as Thurrock Council may require in the interests of safety or to ensure highway construction standards are met and in order to minimise inconvenience to persons using the highway, but must not be unreasonably withheld.

107. In respect of a bridge structure, a highway drainage structure or apparatus, any retaining wall or traffic signals installed or altered as part of the authorised development, the Company must pay to Thurrock Council (at the time when the relevant structure or apparatus is, in accordance with this Order, to become maintainable by Thurrock Council) a commuted sum to reflect any additional cost that may be incurred by Thurrock Council over an appropriate timeframe in maintaining that structure or apparatus, the amount of which is to be determined with reference to the detailed design of the structure or apparatus and agreed between the Company and Thurrock Council, both acting reasonably.

108. Any provision contained in this Part of this Schedule has no effect to the extent that it is the same as, or conflicts with, a provision contained in the Traffic Management (Thurrock Council) Permit Scheme Order 2017, or any other permit scheme made by Thurrock Council under section 33A(**a**) of the 2004 Act.

109. Unless otherwise agreed between the parties any difference arising between the Company and Thurrock Council under this Part of this Schedule (other than a difference as to its meaning or construction) must be determined by arbitration in accordance with article 60 (arbitration).

PART 8

FOR THE PROTECTION OF ANGLIAN WATER

110. The provisions of this Part of this Schedule, unless otherwise agreed in writing between the Company and Anglian Water, have effect.

111. In this Part of this Schedule—

"Anglian Water" means Anglian Water Services Limited, company number 02366656, whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, PE29 6YJ;

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

(a) any drain or works vested in Anglian Water under the WIA 1991; and

(b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(**b**) (adoption of sewers and disposal works) of the WIA 1991 or an agreement to adopt made under section 104(**c**) (agreements to adopt sewer, drain or sewage disposal works) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer or drain (within the meaning in section 219(**d**) (general interpretation) of the WIA 1991) or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

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

"functions" includes powers and duties;

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

"plan" includes sections, drawings, specifications and method statements; and

"the standard protection strips" means the strips of land falling the following distances to either side of the medial line of any relevant apparatus—

(a) 2.25 metres where the diameter of the apparatus is less than 150 millimetres;

(b) 3 metres where the diameter of the apparatus is between 150 and 450 millimetres;

(c) 4.5 metres where the diameter of the apparatus is between 451 and 750 millimetres; and

(d) 6 metres where the diameter of the apparatus exceeds 750 millimetres; and

"the WIA 1991" means the Water Industry Act 1991(**e**)

(**a**) As inserted by paragraphs 4 and 6 of Part 2 of Schedule 10 to the Deregulation Act 2015 (c. 20).
(**b**) As amended by section 96(1) of the Water Act 2003 (c. 37) and paragraphs 2 and 90 of Schedule 7 to the Water Act 2014 (c. 21).
(**c**) As amended by section 96(4) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37), section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and section 11(1) and (2) of the Water Act 2014 (c. 21).
(**d**) There are amendments to section 219 but none are relevant.
(**e**) 1991 c. 56.

112.—(1) The Company must not interfere with, build over or near to any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around any apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed.

(2) The Company must bring the requirements in sub-paragraph (1) to the attention of any agent or contractor responsible for carrying out any of the authorised development on behalf of the Company.

113. The alteration, extension, removal or relocation of any apparatus must not be implemented until—

(a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016(**a**) or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and

(b) the Company has made the appropriate applications required under the WIA 1991 and the Company has supplied to Anglian Water a plan and section of the works proposed and Anglian Water has given the necessary consents and approvals, such consent and approval not to be unreasonably withheld or delayed,

and such works must 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.

114. In the situation where in exercise of the powers under this Order the Company 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 can take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

115. Regardless of any provision in this Order or anything shown on any plan, the Company 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 within the Order limits, the Company must, 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 60 (arbitration).

116. If in consequence of the exercise of the powers under this Order the access to any apparatus is materially obstructed the Company must provide such reasonable 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.

117. If in consequence of the exercise of the powers under this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the Company, notification of the location of such assets will as soon as reasonably practicable be given to Anglian Water and afforded the same protection as other Anglian Water apparatus.

118. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 113 to 115 and 117 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 by Anglian Water, the Company must—

(**a**) S.I. 2016/1154.

(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 reasonably incurred by Anglian Water,

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

PART 9

FOR THE PROTECTION OF HIGHWAYS ENGLAND

Application

119. The provisions of this Part of this Schedule apply to the HE works and have effect unless otherwise agreed in writing between the Company and Highways England.

Interpretation

120.—(1) Where terms defined in article 2 are inconsistent with the terms defined in sub-paragraph (2) below, the latter prevail.

(2) In this Part of this Schedule—

"as-built information" means one digital copy of the following information, where applicable to the phase of the HE works in question—

(a) as-constructed drawings in both pdf and auto CAD dwg formats for anything designed by the Company;

(b) list of suppliers and materials, test results and CCTV surveys (CCTV to comply with DMRB standards);

(c) product data sheets and technical specifications for all materials used;

(d) as-constructed information for any utilities discovered or moved during the works;

(e) method statements for the works carried out;

(f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works or any replacement or modification of it, but subject to any exceptions to it (including a replacement or modification of it) as agreed by the Company and Highways England;

(g) organisation and methods manuals for all products used;

(h) as-constructed programme;

(i) test results and records;

(j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the Company and Highways England;

(k) the health and safety file; and

(l) such other information as may be required by Highways England to be used to update any relevant databases and to ensure compliance with Highways England's Asset Data Management Manual that is in operation at the relevant time;

"the commuted sum" means such sum calculated as provided for in paragraph 130 and approved by Highways England to be used to fund the future cost of maintaining the HE works;

"the contractor" means any contractor or sub-contractor appointed by the Company to construct the HE works;

"the designer" means any designer appointed by the Company to design the HE works;

"the detailed design information" means details of the following—

(a) site clearance details;

(b) boundary and mitigation fencing;

(c) road restraints systems and supporting road restraint risk appraisal process assessment;

(d) drainage and ducting and supporting drainage calculations;

(e) earthworks including supporting geotechnical assessments and any required strengthened earthworks appraisal form certification;

(f) kerbs, footways and paved areas;

(g) traffic signs and road markings;

(h) traffic signal equipment and associated signal phasing and timing detail;

(i) road lighting (including columns and brackets) and supporting lighting calculations;

(j) electrical work for road lighting, traffic signs and signals;

(k) highway structures and any required structural approval in principle;

(l) landscaping;

(m) proposed departures from DMRB requirements;

(n) walking, cycling and horse riding assessment and review report;

(o) utilities diversions;

(p) topographical survey;

(q) site waste management plan;

(r) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any replacement or modification of it;

(s) asbestos survey;

(t) regime of california bearing ratio testing as a method for a ground penetration test for valuation of the mechanical strength of the ground on which new construction of highway is to take place;

(u) regime of core testing and sampling of existing trunk road pavement construction;

(v) site investigation survey;

(w) health and safety information; and

(x) other such information used to inform the detailed design of the HE works that may be required by Highways England;

"the DBFO contract" means the contract between Highways England and the highway management contractor for the maintenance and operation of parts of the strategic road network including the A282, M25, A13 (part) and the A1089;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of it;

"the estimated costs" means the estimated costs in respect of the HE works agreed pursuant to paragraph 125;

"the excess" means the amount by which Highways England estimates that the costs referred to in paragraph 125 will exceed the estimated costs pursuant to paragraph 125(4);

"the HE works" means Work No. 11 and any works ancillary to Work No. 11;

"the highway management contractor" means the management contractor appointed by Highways England under the DBFO contract in respect of the highway on that part of the strategic road network within which the HE works are situated;

"the nominated persons" means the Company's representatives or the contractor's representatives on site during construction of the HE works, as notified to Highways England from time to time;

"the programme of works" means a document setting out the sequence and timetabling of the HE works;

"road safety audit" means an audit carried out in accordance with the road safety audit standard and with a process to be approved by Highways England prior to it being carried out;

"the road safety audit standard" means the DMRB Standard HD 19/15 or any replacement or modification of it; and

"utilities" means any pipes, wires, cables or other equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

General

121. The Company acknowledges that the HE works are situated on highway in respect of which Highways England has appointed the highway management contractor.

Prior approvals

122.—(1) The HE works must not commence until—

(a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by Highways England;

(b) the detailed design of the HE works comprising of the following details has been submitted to and approved by Highways England—

(i) the detailed design information, incorporating all recommendations and any exceptions approved by Highways England under paragraph (a);

(ii) the programme of works;

(iii) details of proposed road space bookings;

(iv) a schedule confirming how relevant routine maintenance obligations imposed on the highway management contractor by the DBFO contract are to be discharged by the Company during execution of the HE works;

(v) a scheme of traffic management;

(vi) the identity of the contractor and nominated persons;

(vii) a process for stakeholder liaison; and

(viii) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the Company in relation to the HE works has been adhered to in accordance with the DMRB Standard HD 42/17;

(c) all necessary temporary traffic regulation measures have been made by the Company under article 52(1) or 52(3) (traffic regulation measures), or all necessary temporary traffic regulation orders have been made by Highways England;

(d) at least 56 days' notice of the commencement date of the HE works has been given to Highways England in writing, unless otherwise agreed by Highways England;

(e) stakeholder liaison has taken place in accordance with the process for such liaison agreed under paragraph (b)(vii); and

(f) the Company has procured and provided to Highways England collateral warranties from the contractor and designer of the HE works in favour of Highways England and the highway management contractor requiring the contractor and designer to exercise all reasonable skill care and due diligence in designing and constructing the HE works, including in the selection of materials, goods, equipment and plant.

(2) Highways England must notify the Company of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 56 days of the information required by sub-paragraphs (1)(a) and (1)(b) being received by Highways England.

(3) In the event of any disapproval, the Company may re-submit the information required by sub-paragraphs (1)(a) and (1)(b) with modifications and Highways England must notify the Company of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 56 days of the revised detailed design information being received by Highways England.

(4) The documents and programmes approved under sub-paragraphs (1) and (2) may be subsequently amended by agreement between the Company and Highways England from time to time, both parties acting reasonably.

(5) Within 28 days of a written request by the Company and in any event prior to the commencement of the HE works, Highways England must inform the Company of the identity of the person who will act as the point of contact on behalf of Highways England for consideration of the information required under sub-paragraphs (1) and (2).

Construction traffic route surveys

123.—(1) The HE works must not commence until a dilapidation survey of the condition of the roads, bridges and retaining walls along the routes approved for construction traffic for the authorised development as part of the scheme of traffic management approved under paragraph 122(1)(b)(v) has been carried out by the Company and has been submitted to and approved in writing by Highways England.

(2) No more than 28 days after the completion of construction of the authorised development, the roads, bridges and retaining walls surveyed under sub-paragraph (1) must be re-surveyed by the Company.

(3) If the re-survey carried out under sub-paragraph (2) indicates that there has been damage to the roads, bridges and retaining walls that have been surveyed, and that such damage is attributable to the use of those roads, bridges and retaining walls by construction traffic for the authorised development, the Company must submit a scheme of remedial works for those damaged routes, bridges and retaining walls to Highways England for its approval in writing, which must not be unreasonably refused.

(4) The scheme of remedial works approved under sub-paragraph (3) must be carried out by the Company at its own cost.

Construction of the HE works

124.—(1) The HE works must be constructed to the satisfaction of Highways England acting reasonably and in accordance with—

(a) the information approved under paragraph 122(1) or as subsequently varied by agreement between the Company and Highways England;

(b) the DMRB and the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works) together with all other relevant standards as required by Highways England (to include all relevant interim advice notes, the Traffic Signs Manual 2008 and any amendment to or replacement of such standards for the time being in force), save to the extent that exceptions to those standards apply which have been approved by Highways England under paragraph 122(1) in respect of the HE works;

(c) the Traffic Signs Regulations and General Directions 2016(**a**); and

(d) all aspects of the Construction (Design and Management) Regulations 2015(**b**).

(2) The Company must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the Company and the contractor by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(3) The Company must permit and must require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside the contractor's obligations under its contract with the Company or the Company's obligations under this Order.

(**a**) S.I. 2016/362, as amended by S.I. 2016/411, S.I. 2017/1011, S.I. 2017/1086 and S.I. 2018/161.
(**b**) S.I. 2015/51, as amended by S.I. 2015/1682 and S.I. 2017/1075.

(4) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England may by notice in writing require the Company, at the Company's own expense to comply with the requirements of this Part of this Schedule.

(5) If within 28 days of the date on which a notice under sub-paragraph (4) is served on the Company, the Company has failed to take the steps required by that notice, Highways England may carry out—

(i) the HE works; or

(ii) works to reinstate the highway and other land and premises of Highways England,

and Highways England may in either case recover from the Company any expenditure reasonably incurred by it in so doing.

(6) If during construction of the HE works the Company causes any damage to the strategic road network then Highways England may by notice in writing require the Company, at the Company's own expense to remedy the damage.

(7) If within 28 days of the date on which a notice under sub-paragraph (6) is served on the Company, the Company has failed to take steps to comply with the notice, Highways England may carry out the steps required of the Company and may recover from the Company any expenditure reasonably incurred by Highways England in so doing, such sum to be payable within 30 days of demand.

(8) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as it reasonably believes to be necessary as a result of the construction of the HE works without prior notice to the Company in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the Company any reasonable expenditure incurred by Highways England in so doing.

(9) In constructing the HE works, the Company must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of Highways England.

Payments

125.—(1) The Company must fund the full cost of the HE works and any incidental and amended works approved under this Part of this Schedule and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including costs and expenses for using internal or external staff) in relation to—

(a) the checking and approval of the information required by paragraph 122(1)(a) and (b);

(b) the supervision of the HE works;

(c) all legal and administrative costs in relation to paragraphs (a) and (b);

(d) routine maintenance approved under paragraph 122(1)(b)(iv);

(e) any transfer of any land required for the HE works;

(f) costs properly payable to the highway management contractor as a consequence of the HE works, including costs incurred in payment of compensation or damages or otherwise arising from any proceedings, actions, claims, demands or liability made against Highways England by the highway management contractor;

(g) any costs incurred by Highways England in undertaking any necessary statutory procedure required as a result of construction of the HE works, and in preparing and bringing into force any traffic regulation order necessary to construct or implement the HE works provided that this paragraph will not apply to the making of any orders which duplicate traffic regulation measures contained in, or which may be made by the Company under, this Order; and

(h) any value added tax which is payable by Highways England in respect of the costs incurred pursuant to paragraphs (a) to (g) which Highways England cannot otherwise recover from HM Revenue and Customs,

paragraphs (a) to (g) together comprising "the estimated costs".

(2) The estimated costs must not include any costs payable to the highway management contractor by Highways England to undertake any of the obligations for which costs may become due by the Company under sub-paragraph (1)(a)-(1)(e) unless such costs are contained within the schedule of estimated costs agreed pursuant to sub-paragraph (1).

(3) The Company and Highways England must, acting reasonably, agree a schedule of the estimated costs prior to the commencement of the HE works and once that schedule is agreed the Company must pay to Highways England the estimated costs prior to commencing the HE works and in any event prior to Highways England incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, Highways England reasonably believes that the costs will exceed the estimated costs it may give notice to the Company of the excess and the Company must pay to Highways England within 30 days of the date of that notice a sum equal to the excess.

(5) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

(6) Highways England is not entitled to costs or expenses incurred under any limb of sub-paragraph (1) if those costs or expenses are included as part of the estimated costs under any other limb of that sub-paragraph.

Provisional certificate and defects period

126.—(1) As soon as—

(a) a stage 3 road safety audit for the HE works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by Highways England;

(b) the HE works incorporating the approved remedial works under paragraph (a) have been completed;

(c) the Company has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by Highways England upon the issue of the provisional certificate; and

(d) the as-built information has been provided to Highways England,

Highways England must issue a provisional certificate of completion in respect of the HE works.

(2) The Company must at its own expense remedy any defects in the HE works which Highways England has reasonably identified in a notice given in writing to the Company during a period of 12 months from the date of the provisional certificate in accordance with the following timescales:

(a) in respect of matters of urgency, within 24 hours of receiving the notice;

(b) in respect of matters which Highways England considers to be serious defects, within 14 days of receiving notification of the same; and

(c) in respect of all other defects notified to the Company, within 4 weeks of receiving notification of the same.

(3) Following the issue of the provisional certificate Highways England will be responsible for the HE works and must maintain them at its own expense.

(4) The Company must submit to Highways England stage 4(a) and stage 4(b) road safety audits as required by and in line with the timescales stipulated in the road safety audit standard.

(5) The Company must comply with the findings of the stage 4(a) and stage 4(b) road safety audits referred to in sub-paragraph (4) and be responsible for all costs of and incidental to them and provide updated as-built information to Highways England..

Opening to traffic

127. The Company must notify Highways England of the intended date of opening of the HE works to public traffic not less than 14 days in advance of the intended date and the Company must notify Highways England of the actual date that the HE works were opened to public traffic within 14 days of that date.

Final certificate

128.—(1) The Company must apply to Highways England for the issue of the final certificate at the expiration of the period referred to in paragraph 126(1), or if paragraph 126(2) applies at the expiration of the date on which any defects or damage arising from defects during that period have been made good to the reasonable satisfaction of Highways England and subject to the Company complying with the requirements on the Company in paragraphs 126(3) to (5) inclusive.

(2) If the provisions of sub-paragraph (1) are satisfied Highways England must issue a final certificate, such certificate not to be unreasonably withheld or delayed.

(3) The Company must pay to Highways England within 30 days of demand the costs reasonably incurred by Highways England in identifying defects and supervising and inspecting the Company's work to remedy such defects pursuant to paragraph 126.

Security

129.—(1) The HE works must not commence until—

(a) the works are secured by a bond in a form and for a bond sum first approved by Highways England to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the Company under the provisions of this Part of this Schedule and the maximum liability of the bond must not exceed the agreed bond sum; and

(b) the Company has provided a cash surety for a sum first approved by Highways England which may be utilised by Highways England in the event of the Company failing to meet its obligations to make payments under paragraph 125 or to carry out works the need for which arises from a breach of one or more of the obligations of the Company under the provisions of this Part of this Schedule (which must for the avoidance of doubt be a single cash surety for the entirety of the value of the HE works).

(2) Within 28 days of the issue of the final certificate referred to in paragraph 128, Highways England must in writing release the bond provider from its obligations in respect of the bond sum and release the remainder of the cash surety to the Company save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date, in which case Highways England will retain a sufficient sum to meet all necessary costs required to settle that claim.

Commuted sum

130.—(1) Before commencing the HE works Highways England must provide the Company with an estimate of the commuted sum.

(2) The Company must pay to Highways England the commuted sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18th January 2010 (or any replacement of it) as modified to reflect reasonable contractual payments to the highway management contractor within 28 days of the date that the HE works become maintainable by Highways England under paragraph 126.

Insurance

131. Prior to commencement of the HE works the Company must effect (or must procure that the contractor effects) public liability insurance with an insurer in the minimum sum of £10,000,000 (ten million pounds) in respect of any one claim against any legal liability for damage, loss or injury to any property or any person as a direct result of the construction of the authorised development by the Company.

Indemnity

132.—(1) The Company must in relation to the construction of the HE works take such precautions for the protection of the public and private interests as would be incumbent upon it if it were the highway authority and must indemnify Highways England from and against all costs, expenses, damages, losses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design and construction of the HE works provided that—

(a) Highways England notifies the Company immediately upon receipt of any such claim, demand, action or proceedings;

(b) unless Highways England is otherwise required to do so sooner as a requirement in law or to comply with any order of the court, Highways England must prior to the settlement or compromise of any such claim, demand, action or proceedings consult the Company and have regard to any representations made by the Company in respect of any such claim, demand, action or proceedings provided that such representations are received promptly and in any event not later than 14 days after notification is given in accordance with sub-paragraph (1); and

(c) following the acceptance of any such claim, demand, action or proceedings, Highways England notifies the Company of the quantum in writing.

(2) Within 30 days of receiving notice of the quantum under sub-paragraph (1)(c), the Company must pay Highways England the amount specified as the quantum.

(3) Sub-paragraphs (1) and (2) do not apply if the costs, expenses, damages, losses and liabilities were caused by or arise out of the neglect or default of Highways England or its officers, servants, agents, contractors or any person or body for whom it is responsible.

Expert determination

133.—(1) Subject to sub-paragraph (5), article 60 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the Company and Highways England or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) The Company and Highways England must use their best endeavours to settle a dispute within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The expert must—

(a) invite the parties to make submissions to the expert in writing and copied to the other parties to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other parties within 21 days of receipt of the submission;

(c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and

(d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 60 (arbitration).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such a determination, equally.

PART 10

FOR THE PROTECTION OF RWE GENERATION UK PLC

134. The provisions of this Part of this Schedule have effect for the protection of RWE Generation UK plc unless otherwise agreed in writing between the Company and RWE Generation UK plc.

135. In this Part of this Schedule—

"alternative apparatus" means any apparatus, plant or equipment installed by RWE from time to time within the extended port limits—

(a) to materially modify, replace or perform substantially the same function as the existing apparatus; or

(b) otherwise in connection with the construction of any power station by RWE on land adjacent to the Order limits,

to the extent that the apparatus referred to in either case is proposed to be within the area shaded brown on sheet 3 of the works plans;

"the existing apparatus" means the former Tilbury B power station cooling water intake caissons and cooling water intake tunnels, to the extent that they are for the time being owned by RWE, as shown on sheet 3 of the works plans and as more particularly defined as the "Transferor's Jetty Fixtures" in the jetty asset transfer;

"functions" includes powers and duties;

"in", in a context referring to the existing apparatus or alternative apparatus being in land, includes a reference to apparatus under, over or on land;

"the jetty" means the existing river jetty;

"the jetty asset transfer" means an agreement for the transfer of the jetty from RWE to the Company dated 31st March 2017;

"the land access" means access by RWE to the existing apparatus by passing over the jetty in accordance with the jetty asset transfer, or in such other manner as may be agreed with the Company;

"plan" includes all designs, drawings, specifications and method statements necessary to describe the works to be executed;

"the river access" means access by RWE to the existing apparatus by use of the river Thames within the extended port limits; and

"RWE" means RWE Generation UK Plc, company number 03892782 of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB or any of its entities or successor entities and includes any assignee of the jetty asset transfer.

Existing apparatus

136. This Order does not authorise the acquisition of any of the existing apparatus by the Company, except with RWE's agreement.

137. The authorised development must be carried out, operated and maintained so as not to damage, interfere with, move or destroy the existing apparatus except with RWE's agreement.

138.—(1) If, for the purpose of constructing any works comprised in the authorised development the Company requires the ability temporarily to interfere with the land access or the river access, it must, except in emergencies, give to RWE 14 days' advance written notice of that requirement, together with a plan of the works proposed and a date by when the temporary interference will end.

(2) If, for the purpose of maintaining any works comprised in the authorised development the Company requires the ability temporarily to interfere with the land access or the river access, it must, except in emergencies, give to RWE 28 days' advance written notice of that requirement, together with a plan of the works proposed and a date by when the temporary interference will end.

(3) The Company must end the temporary interference with the land access or the river access on the date given pursuant to sub-paragraph (1) or (2) unless otherwise agreed in writing between RWE and the Company.

(4) Those works must be executed in accordance with the plan submitted under sub-paragraph (1) or (2) and in accordance with such reasonable requirements as may be made by RWE for the protection of RWE's access to the existing apparatus.

(5) At all times during execution of those works RWE must be afforded by the Company sufficient emergency access to the existing apparatus.

(6) Any requirements made by RWE under sub-paragraph (4) must be made within a period of 7 days beginning with the date on which a plan under sub-paragraph (4) is submitted to it and within a period of 14 days beginning with the date on which a plan under sub-paragraph (2) is submitted to it.

(7) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 14 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 will apply to and in respect of the new plan.

(8) The Company is not required to comply with sub-paragraph (1) or (2) in emergencies but in those circumstances it must give to RWE notice and a plan of the works concerned as soon as reasonably practicable and the Company must comply with sub-paragraph (4) in so far as is reasonably practicable in the circumstances.

(9) Any proposed temporary interference with the land access or the river access by the Company after 1st June 2021 must have reasonable regard to any need for RWE to exercise the land access or river access to undertake works to the existing apparatus as part of the development of a power station on land adjacent to the Order limits and adopt any reasonable requirements that may be made by RWE to ensure that any temporary interference does not prejudice RWE's development programme for a power station on land adjacent to the Order limits provided that those requirements must not materially interfere with the unloading and loading of vessels within the extended port limits.

139.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction, operation or maintenance of the authorised development any damage is caused to the existing apparatus (other than any part of that apparatus whose repair is not reasonably necessary in view of its intended removal by RWE) the Company must bear and pay the cost reasonably incurred by RWE in making good such damage.

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

140.—(1) The Company agrees that it will not withhold its consent under article 3(7) (disapplication of legislation, etc.) to any licence proposed to be granted by the PLA under section 66 (licensing of works) or 73(**a**) (licensing of dredging, etc.) of the 1968 Act in so far as it relates to the retention, maintenance and use of the existing apparatus, nor require any modifications or

(**a**) As amended by section 46 of the Criminal Justice Act 1982 (c. 48).

impose any terms or conditions under article 3(9) that are in addition to the standard terms of any such licence as are published on the PLA's website from time to time.

(2) If at the relevant time the Company has a proprietary interest in the parts of the river Thames situated within the extended port limits in respect of which RWE holds a licence granted by the PLA under section 66 or 73 of the 1968 Act relating to the existing apparatus, the Company agrees that it will for no consideration—

(a) in the case of the works licence, give its consent under article 3(8) so that the grant of the licence to RWE will, pursuant to section 66(1)(b) of the 1968 Act, be deemed to confer on RWE such rights in, under or over the land concerned as are necessary to enable RWE to enjoy the benefit of the licence for as long as the licence subsists; and

(b) in the case of the dredging licence, grant to RWE such rights over the land as are necessary to enable RWE to carry out the work covered by, and in accordance with, the terms of the licence.

Alternative apparatus

141. RWE and the Company must use their reasonable endeavours to co-ordinate with each other on the timing and method of construction and maintenance of the authorised development and the construction, use and maintenance of any alternative apparatus by RWE, in the interests of health and safety and the efficient and economic—

(a) construction of the authorised development; and

(b) construction of any alternative apparatus.

142. In particular, the Company must consult with RWE prior to finalising the detailed design of Work No. 2 and will accommodate any reasonable requirements of RWE in relation to the detailed design or construction of Work No. 2 so as to accommodate any alternative apparatus, provided those requirements—

(a) are made prior to the Company finalising the detailed design of Work No. 2;

(b) would not be detrimental to the construction, operation or maintenance of the authorised development; and

(c) RWE pays to the Company such additional reasonable and proper costs as the Company would incur in accommodating those requirements.

143. If and to the extent that any alternative apparatus to be placed in the parts of the river Thames situated within the extended port limits and in respect of which at the relevant time the Company has a proprietary interest is licensed by the PLA under section 66 (licensing of works) of the 1968 Act, or in respect of which RWE holds a licence granted by the PLA under section 73 (licensing of dredging, etc.) the Company agrees that it will for no consideration—

(a) in the case of the works licence, give its consent under article 3(8) (disapplication of legislation, etc.) so that the grant of the licence to RWE will, pursuant to section 66(1)(b) of the 1968 Act, be deemed to confer on RWE such rights in, under or over the land concerned as are necessary to enable RWE to enjoy the benefit of the licence for as long as the licence subsists; and

(b) in the case of the dredging licence, grant to RWE such rights over the land as are necessary to enable RWE to carry out the work covered by, and in accordance with, the terms of the licence.

Highway access

144.—(1) The Company must construct Work Nos. 4 and 10 so that they afford a clearance under Work No. 10 of at least 6 metres.

(2) The Company must use reasonable endeavours in operating the authorised development to facilitate access by abnormal load vehicles to RWE's land adjacent to and on the eastern side of the Order limits in connection with the construction of any power station by RWE on that land.

General

145. Any difference or dispute arising between the Company and RWE under this Part of this Schedule must, unless otherwise agreed in writing between the Company and RWE, be determined by arbitration in accordance with article 60 (arbitration) of this Order.

146. Subject to the provisions of this Part of this Schedule, RWE's and the Company's rights and interests under the jetty asset transfer continue to subsist and to have effect.

147. The Company and RWE must each act reasonably in connection with the implementation of this Part of this Schedule.

PART 11

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

148. The provisions of this Part of this Schedule have effect for the protection of the undertaker referred to in this Part of this Schedule, unless otherwise agreed in writing between the Company and the undertaker.

Interpretation

149. In this Part of this Schedule—

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

"apparatus" means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by the undertaker for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"the authorised development" has the same meaning in article 2(1) (interpretation) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" has the same meaning as in article 2(1) of this Order and "commencement" is to be construed accordingly, and for the purpose of this Part of this Schedule only includes any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 meters of any apparatus;

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

"functions" includes powers and duties;

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

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the Company to submit for the undertaker's approval a ground mitigation scheme;

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

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

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

"undertaker" means, as appropriate Cadent Gas Limited or any successor in title or assign including a successor to their licence as a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(**a**); and

"specified works" means any part of the authorised development or activities undertaken in association with the authorised development which—

(a) is or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the Company under paragraph 7(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the Company under paragraph 154(2) or otherwise; or

(c) includes any activity that is referred to in paragraph 8 of T/SP/SSW/22 (the undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22").

On Street Apparatus

150.—(1) Except for paragraphs 151, 154 and 155 in so far as paragraph (2) applies, 156 , 157 and 158, which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the Company and the undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) Paragraphs 154 and 155 apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but is not wholly replaced within existing adopted public highway.

Apparatus of undertaker in stopped up streets

151.—(1) Without prejudice to the generality of any other protection afforded to the undertaker elsewhere in the Order, where any street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), if the undertaker has any apparatus in the street or accessed via that street the undertaker is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the Company must grant to the undertaker, or must procure the granting to the undertaker of, legal easements reasonably satisfactory to the undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the Company or the undertaker to require the removal of that apparatus under paragraph 154.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up and restriction of use of streets), the undertaker is at liberty at all times to take all necessary access across any such stopped up highway or to execute and do all

(**a**) 1986 c. 44.

such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

(3) The provisions of this Part of this Schedule apply and take precedence over article 35 (apparatus and rights of statutory utilities in stopped up streets).

Protective works to buildings

152. The Company, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the undertaker.

Acquisition of land

153.—(1) Regardless of any provision in this Order or anything shown on the land, special category land and crown land plans or contained in the book of reference, the Company may not acquire any land interest or apparatus or acquire, extinguish, interfere with or override any easement or other interest or right of the undertaker otherwise than by agreement.

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

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

(4) Any agreement or consent granted by the undertaker under paragraph 156 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

154.—(1) If, in the exercise of the agreement reached in accordance with paragraph 153 or in any other authorised manner, the Company 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 the undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the undertaker in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of carrying out any part of the authorised development, in, on, under or over any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, it must give to the undertaker advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove

any of its apparatus) the Company must, subject to sub-paragraph (3), afford to the undertaker to its satisfaction (taking into account paragraph 155(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the Company, or the Company is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must, on receipt of a written notice to that effect from the Company, take such steps to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the Company's assistance if required by the undertaker, save that this obligation does not extend to the requirement for the undertaker 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 or land secured by the Company under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the undertaker and the Company.

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the Company and agreed with the undertaker under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, the terms and conditions to which those facilities and rights are subject in the matter must be referred to arbitration in accordance with paragraph 162 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the Company to the undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

156.—(1) Not less than 56 days or such time period as may be agreed by the undertaker and Company before the commencement of any specified works the Company must submit to the undertaker a plan and, if reasonably required by the undertaker, a ground monitoring scheme in respect of those works.

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

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

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

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and

(b) must not be unreasonably withheld.

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

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

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

(8) If the undertaker in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 148 to 150 and 153 to 155 apply as if the removal of the apparatus had been required by the Company under paragraph 154(2).

(9) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 56 days or such time period as may be agreed by the undertaker and the Company before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph applies to and in respect of the new plan.

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

(a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) The Company must comply with the undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services" at all times when carrying out any part of the authorised development.

(12) As soon as reasonably practicable after any ground subsidence event, identified in light of monitoring required in sub-paragraph (1) or which otherwise becomes apparent, attributable to the authorised development the Company must implement an appropriate ground mitigation scheme. If following the implementation of the ground mitigation scheme the undertaker believes protective work is essential to protect its apparatus it may, on giving the Company reasonable

notice save in an emergency, carry out such essential protective works and recover the costs of so doing in accordance with paragraph 157.

Expenses

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

(a) any costs reasonably incurred by or compensation properly paid by the undertaker in connection with the acquisition of rights or the exercise of statutory powers for alternative such apparatus including without limitation all costs incurred by the undertaker as a consequence of the undertaker—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 154(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the undertaker;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of 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 Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with paragraph 162 to be necessary, then, if such placing incurs cost in work involving the installation of apparatus or alternative apparatus under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs must be borne by the Company.

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

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) must be reduced by the amount that represents the benefit, provided that, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course save in respect of cathode protected steel mains or other apparatus with an indefinite life span.

Indemnity

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

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

(b) indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid other than arising from any default of the undertaker.

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

(3) Nothing in sub-paragraph (1) imposes any liability on the Company in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents; and

(b) any part of the authorised development or any other works authorised by this Part of this Schedule carried out by the undertaker as an assignee, transferee or lessee of the Company or any other person with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this paragraph (b) are subject to the full terms of this Part of this Schedule including this paragraph 158.

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

Enactments and agreements

159. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the Company, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the Company and the undertaker in respect of any apparatus laid or erected in land belonging to the Company on the date on which this Order is made.

Co-operation

160.—(1) Where in consequence of the proposed construction of any part of the authorised development, the Company or the undertaker requires the removal of apparatus under paragraph 154(2) or the undertaker makes requirements for the protection or alteration of apparatus under paragraph 156, the Company must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the undertaker's undertaking and the undertaker must use its best endeavours to co-operate with the Company for that purpose.

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

Access

161. If in consequence of the agreement reached in accordance with paragraph 153(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the Company must provide such alternative rights and means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

162. Any difference or dispute arising between the Company and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the Company and the undertaker, be determined by arbitration in accordance with article 60 (arbitration).

PART 12

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

163. The provisions of this Part of this Schedule have effect for the protection of the undertaker referred to in this Part of this Schedule unless otherwise agreed in writing between the Company and the undertaker.

Interpretation

164. In this Part of this Schedule—

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

"apparatus" means in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989(**a**), belonging to or maintained by that undertaker together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"the authorised development" has the same meaning as in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"commence" has the same meaning as article 2(1) of the Order and "commencement" is to be construed accordingly, and for the purpose of this Part of this Schedule only the terms commence and commencement include below ground surveys or monitoring or the receipt and erection of construction plant and equipment within 15 metres of any apparatus;

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

"functions" includes powers and duties;

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

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, triggers a requirement on the Company to submit for the undertaker's approval a ground mitigation scheme;

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

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

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

"undertaker" means an electricity undertaker being a licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;

"specified works" means any part of the authorised development or activities undertaken in association with the authorised development which—

(a) is or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the Company under paragraph 169(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the Company under paragraph 169(2) or otherwise.

(**a**) 1989 c. 29.

On street apparatus

165. Except for paragraphs 166 , 171 , 172 and 173 , which apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the Company and the undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of undertaker in stopped up streets

166.—(1) Without prejudice to the generality of any other protection afforded to the undertaker elsewhere in the Order, where any street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), if the undertaker has any apparatus in the street or accessed via that street the undertaker is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the Company must grant to the undertaker, or must procure the granting to the undertaker of, legal easements reasonably satisfactory to the undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the Company or undertaker to require the removal of that apparatus under paragraph 169.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up and restriction of use of streets), the undertaker is at liberty at all times to take all necessary access across any such stopped up highway or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

(3) The provisions in this Part of this Schedule apply and take precedence over article 35 (apparatus and rights of statutory utilities in stopped up streets).

Protective works to buildings

167. The Company, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the undertaker.

Acquisition of land

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

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

(3) The Company and the undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights,

agreements and licences granted, used, enjoyed or exercised by the undertaker or other enactments relied upon by the undertaker as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(4) Any agreement or consent granted by the undertaker under paragraph 171 or any other paragraph of this Part of this Schedule does not constitute agreement under paragraph 168(1).

Removal of apparatus

169.—(1) If, in the exercise of the agreement reached in accordance with paragraph 168(1) or in any other authorised manner, the Company 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 the undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the undertaker in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of carrying out any part of the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, it must give to the undertaker advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of its apparatus) the Company must, subject to sub-paragraph (3), afford to the undertaker to its satisfaction (taking into account paragraph 170(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the Company, or the Company is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must, on receipt of a written notice to that effect from the Company, take such reasonable steps to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for the undertaker 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 or land secured by the Company under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the undertaker and the Company.

(5) The undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraphs (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 Company to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the Company and agreed with the undertaker under paragraph 170(1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, the terms and conditions to which those facilities and rights are subject in the matter must be

referred to arbitration in accordance with paragraph 177 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the Company to the undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

171.—(1) Not less than 56 days or such time period as may be agreed by the undertaker and the Company before the commencement of any specified works the Company must submit to the undertaker a plan of the works to be executed and, if reasonably required by the undertaker, a ground monitoring scheme in respect of those works and seek from the undertaker 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 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement which describes—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

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

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by the undertaker's engineers; and

(h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

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

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and

(b) must not be unreasonably withheld.

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

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

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

(9) If the undertaker in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 163 to 165 and 168 to 170 apply as if the removal of the apparatus had been required by the Company under paragraph 169(2).

(10) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 56 days or such time period as may be agreed by the undertaker and the Company before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph applies to and in respect of the new plan.

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

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

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

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the Company must implement an appropriate ground mitigation scheme. If following the implementation of the ground mitigation scheme the undertaker believes protective work is essential to protect its apparatus it may, on giving the Company reasonable notice save in an emergency, carry out such essential protective works and recover the costs of so doing in accordance with paragraph 172.

Expenses

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

(a) any costs reasonably incurred by or compensation properly paid by the undertaker in connection with the acquisition of rights or the exercise of statutory powers for such alternative apparatus including without limitation all costs incurred by the undertaker as a consequence of the undertaker—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 169(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the undertaker;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of 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 Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with article 177 to be necessary, then, if such placing incur cost in works involving the installation of apparatus or alternative apparatus under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs must be borne by the Company.

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

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

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

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

Indemnity

173.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works to apparatus or alternative apparatus authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the

authorised development by or on behalf of the Company or in consequence of any act or default of the Company (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the Company under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of the undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the undertaker, or the undertaker becomes liable to pay any amount to any third party, the Company must—

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

(b) indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid other than arising from any default of the undertaker.

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

(3) Nothing in sub-paragraph (1) imposes any liability on the Company in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents; and

(b) any part of the authorised development works or any other works authorised by this Part of this Schedule carried out by the undertaker as an assignee, transferee or lessee of the Company with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this paragraph (b) are subject to the full terms of this Part of this Schedule including this paragraph 173.

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

Enactments and agreements

174. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the Company, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the Company and the undertaker in respect of any apparatus laid or erected in land belonging to the Company on the date on which this Order is made.

Co-operation

175.—(1) Where in consequence of the proposed construction of any part of the authorised development, the Company or the undertaker requires the removal of apparatus under paragraph 169(2) or the undertaker makes requirements for the protection or alteration of apparatus under paragraph 171, the Company must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the undertaker's undertaking and the undertaker must use its best endeavours to co-operate with the Company for that purpose.

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

Access

176. If in consequence of the agreement reached in accordance with paragraph 168(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the Company must provide such alternative means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

177. Any difference or dispute arising between the Company and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the Company and the undertaker, be determined by arbitration in accordance with article 60 (arbitration).

SCHEDULE 11

Article 58

DOCUMENTS TO BE CERTIFIED

(1) *Document*	*(2)* *Description*
bird monitoring and action plan	The bird monitoring and action plan contained in document reference [PoTLL/T2/EX/155].
book of reference	The book of reference contained in document reference 4.3 v3 [PoTLL/T2/EX/219].
classification of roads plans	The classification of roads plans contained in document reference 2.6.
construction environmental management plan	The construction environmental management plan v3 contained in document reference [PoTLL/T2/EX/185].
engineering drawings and plans	The engineering drawings and plans contained in document reference 2.9 [PoTLL/T2/EX/6].
ecological mitigation and compensation plan	The ecological mitigation and compensation plan contained in document reference [PoTLL/T2/EX/212].
environmental statement	The environmental statement, figures and appendices contained in document references 6.1, 6.2, 6.3 and 6.4 (subject to the substitutions set out below): (a) The environmental statement non-technical summary contained in document reference v3 [PoTLL/T2/EX/175]. (b) The framework travel plan (appendix 13.B) contained in document reference v2 [PoTLL/T2/EX/140]. (c) The landscape and ecological management plan (appendix 10.P) contained in document reference v3 [PoTLL/T2/EX/177]. (d) The marine archaeological written scheme of investigation (appendix 12.E) contained in document reference v6 [PoTLL/T2/EX/228]. (e) The monitoring and background noise and modelling of construction noise at Tilbury Docks (appendix 17.A) contained in document reference v2 [Appendix 1 of PoTLL/T2/EX/94]. (f) The sustainable distribution plan (appendix 13.C) contained in document reference v2 [PoTLL/T2/EX/142]. (g) The written scheme of investigation for terrestrial archaeological mitigation (appendix 12.D) contained in document reference v3 [PoTLL/T2/EX/104].

(1) *Document*	*(2)* *Description*
extended port limits plan	The extended port limits plan contained in document reference v3 [PoTLL/T2/EX/153].
level 3 flood risk assessment addendum	The level 3 flood risk assessment addendum contained in document reference [PoTLL/T2/EX/46].
land, special category land and crown land plans	The land, special category land and crown land plans contained in document reference 2.3 v3 [PoTLL/T2/EX/127].
limits of dredging plan	The limits of dredging plan contained in document reference v3 [PoTLL/T2/EX/123].
operational community engagement plan	The operational community engagement plan contained in document reference 5.4 v2 [PoTLL/T2/EX/125].
operational management plan	The operational management plan contained in document reference 6.10 v3 [PoTLL/T2/EX/181].
the requirement 3 colour palette	The requirement 3 colour palette contained in document reference [PoTLL/T2/EX/160].
rights of way and access plans	The rights of way and access plans contained in document reference 2.5 v2 [POTLL/T2/EX/132].
traffic regulation measures plan	The traffic regulation measures plan contained in document reference 2.7 v2 [POTLL/T2/EX/133].
works plans	The works plans contained in document reference 2.4 v4 [POTLL/T2/EX/223].

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Port of Tilbury London Limited to construct, operate and maintain a new port terminal and associated facilities near to the existing Port of Tilbury on the river Thames.

The Order would permit Port of Tilbury London Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of all documents mentioned in this Order and certified in accordance with article 58 (certification of documents) of this Order may be inspected free of charge during working hours at Port of Tilbury London Limited, Leslie Ford House, Tilbury, Essex, RM18 7EH.

DATED: 20th December 2023

PORT OF TILBURY LONDON LIMITED

THE PORT OF TILBURY (EXPANSION) ORDER 2019

GENERAL VESTING DECLARATION

relating to land

lying to the south of the town of Tilbury, between the A1089 Ferry Road and Fort Road, in the unitary area of Thurrock, in the County of Essex

and referred to as

THE TILBURY2 GENERAL VESTING DECLARATION 2023

Pinsent Masons

FORM OF GENERAL VESTING DECLARATION

THIS GENERAL VESTING DECLARATION is executed on the 20th. **December 2023**

by Port of Tilbury London Limited ("**PoTLL**").

WHEREAS:-

(1) On 20 February 2019, a development consent order entitled The Port of Tilbury (Expansion) Order 2019 (SI 2019, No. 359) was made by the Secretary of State for Transport under the powers conferred on him by the Planning Act 2008 ("**the Development Consent Order**").

(2) The Development Consent Order came into force on 13 March 2019, and authorises PoTLL to exercise powers under the Development Consent Order to acquire compulsorily the land described in Schedule 1 hereto (in addition to acquiring other land, acquiring new rights over other land and imposing restrictive covenants over other land also included in the Development Consent Order).

(3) Article 31 of the Development Consent Order provides for the application, with modifications (as identified in article 31) of the Compulsory Purchase (Vesting Declarations) Act 1981 ("**the Act**") to acquisitions made under the Development Consent Order, with the effect that the Act prescribes vesting procedures for land subject to powers of compulsory acquisition under the Development Consent Order.

(4) Notices of compulsory acquisition in accordance with section 134 of the Planning Act 2008 were first served by PoTLL on 28 February 2019.

(5) Those notices included the statement and were in the form prescribed by Regulation 3(2)(b) of the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017.

NOW THIS DEED WITNESSES that, in exercise of the powers conferred on it by section 4 of the Act, as applied by article 31 of the Development Consent Order, PoTLL hereby declares that:-

1. all the plots of freehold land shown coloured pink on the Tilbury2 GVD Plan annexed in Appendix 1 hereto and specified in more detail in Schedule 1 hereto (herein referred to as " **the GVD Land**"), but in relation to the individual plots within the GVD Land not including any apparatus or rights in respect of any apparatus, or any other interests present in the GVD Land on the Vesting Date that are owned by the parties listed against the affected plots in column 4 of the table in Schedule 1 (herein referred to as "**Interests Excluded from Acquisition**"), to the intent that the GVD Land shall be vested in PoTLL in consequence of this Declaration subject to and with the benefit of any of the Interests Excluded from Acquisition subsisting, as from the end of the period of 3 months from the date on which the service of notices required by section 6 of the Act is completed (herein referred to as "**the Vesting Date**");

2. for the purposes of section 2(2) of the Act, the specified period in relation to the GVD Land is one year and one day; and

3. this Declaration shall have the effect of vesting in PoTLL on the Vesting Date a freehold estate in the whole of the GVD Land,

and PoTLL hereby requests the Chief Land Registrar on or after the Vesting Date to register PoTLL as the proprietor of a freehold estate in the whole of the GVD Land with absolute title but subject to and with the benefit of any Interests Excluded from Acquisition.

SCHEDULE 1

DESCRIPTION OF THE GVD LAND

Note (1): References to the plot numbers below are references to the plot numbers shown on the Tilbury2 GVD Plan annexed in Appendix 1 hereto.

Note (2): In relation to each of the plots of land identified in the table below by reference to columns (1), (2) and (3) there is excepted from the acquisition all interests in that plot owned by the corresponding person or body listed in column (4).

Note (3): References to the person or body identified in column (4) of the table below include a reference to that person or body's predecessor or successor.

Plot Number on GVD Plan (1)	Plot Description (2)	Part of HMLR Title Number (3)	Interest(s) Excepted from Acquisition (4)
Land to be Acquired			
03/01	Approximately 32 square metres of operational railway (Tilbury2 Rail Access), scrubland and shrubbery; south of London to Southend Railway line and residential properties at The Beeches, Tilbury, Essex	Unregistered	Network Rail Infrastructure Limited Thurrock Council
03/02	Approximately 255 square metres of operational railway (Tilbury2 Rail Access) drain, scrubland, trees and shrubbery; south of London to Southend Railway line and residential properties at The Beeches, Tilbury, Essex	EX519096	Network Rail Infrastructure Limited
03/03	Approximately 492 square metres of operational railway (Tilbury2 Rail Access), private road and verge (Tilbury2 Access Road), footway, noise barrier and fencing, railing, drains ditches, culvert, scrubland, trees and shrubbery; south of London to Southend Railway line and residential properties at The Beeches, Tilbury, Essex	Unregistered	Network Rail Infrastructure Limited Thurrock Council Environment Agency
03/04	Approximately 24490 square metres of operational railway (Tilbury2 Rail Access), private access point, rail infrastructure, private road and verge (Tilbury2 Access Road), footway, hardstanding, noise barrier and fencing, railing, drains, ditches, scrubland, trees and shrubbery; south of London to Southend Railway line and north of Fort Road, Tilbury, Essex	EX519096	Network Rail Infrastructure Limited Anglian Water Services Limited Cadent Gas Limited National Gas Transmission plc National Grid Gas plc
03/08	Approximately 10522 square metres of operational railway (Tilbury2 Rail Access) public highway and verge (Fort Road), private road and verge (Tilbury2	EX987997, EX519096 and part Unregistered	Cornerstone Telecommunications Infrastructure Limited

Plot Number on GVD Plan (1)	Plot Description (2)	Part of HMLR Title Number (3)	Interest(s) Excepted from Acquisition (4)
	Access Road), embankment and bridge structure (Fort Road Bridge), footway telecommunications mast (Fort Road Mast), substation, noise barrier and fencing, railing, cattle grid, pond, drains, ditches, scrubland, trees and shrubbery; south of London to Southend Railway line, Tilbury, Essex		UK Power Networks Limited UK Power Networks (Operations) Limited Openreach Ltd Essex and Suffolk Water Level 3 Communications Limited Plancast Limited Thurrock Power Limited Network Rail Infrastructure Limited
03/09	Approximately 13 square metres of private road and verge (Tilbury2 Access Road); south of London to Southend Railway line and north-west of Fort Road, Tilbury, Essex	EX519096	Network Rail Infrastructure Limited
03/10	Approximately 4009 square metres of operational railway (Tilbury2 Rail Access) private road and verge (Tilbury2 Access Road), footway, noise barrier and fencing, drains, ditches, scrubland, trees, and shrubbery; south of London to Southend Railway line and north-west of Fort Road, Tilbury, Essex	EX519096	
03/11	Approximately 1073 square metres of public highway and verge (Fort Road), embankment and bridge structure (Fort Road Bridge), footway, noise barrier and fencing, ditch and shrubbery; south-east of Fort Road, Tilbury, Essex	EX987997	Thurrock Power Limited
03/12	Approximately 2466 square metres of operational railway (Tilbury2 Rail Access) private road and verge (Tilbury2 Access Road), footway, noise barrier and fencing, culvert, scrubland, trees and shrubbery; south of London to Southend Railway line and north-west of Fort Road, Tilbury, Essex	EX519096	Network Rail Infrastructure Limited UK Power Networks Limited UK Power Networks (Operations) Limited Openreach Ltd Essex and Suffolk Water

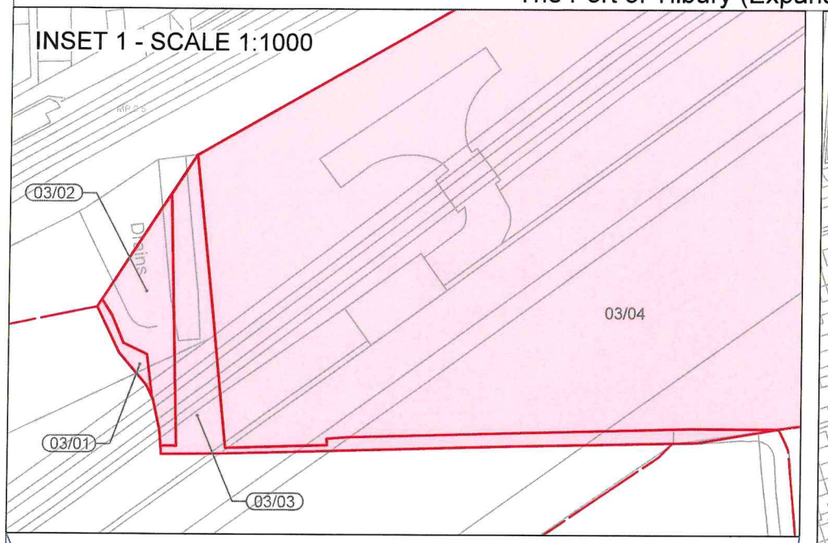
Plot Number on GVD Plan (1)	Plot Description (2)	Part of HMLR Title Number (3)	Interest(s) Excepted from Acquisition (4)
			Level 3 Communications Limited Plancast Limited Thurrock Power Limited
03/16	Approximately 991 square metres of operational railway siding (London to Southend railway) fencing, scrubland trees and shrubbery; north-west of Electricity Distribution Site and east of Fort Road, Tilbury, Essex	***Whole of title*** EX986738	UK Power Networks Limited UK Power Networks (Operations Limited) Anglian Water Services Limited Network Rail Infrastructure Limited

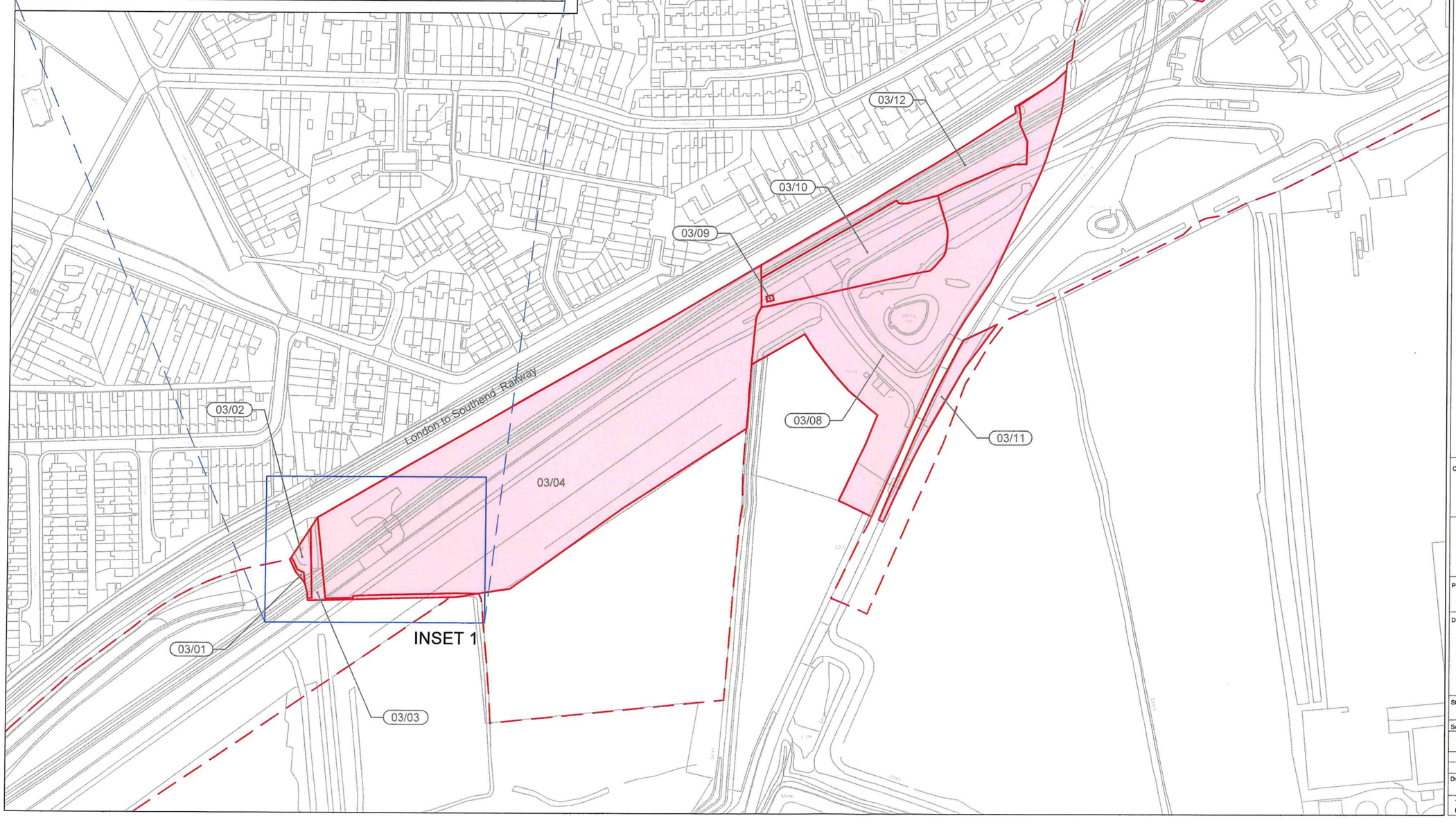
APPENDIX 1

THE TILBURY2 GVD PLAN

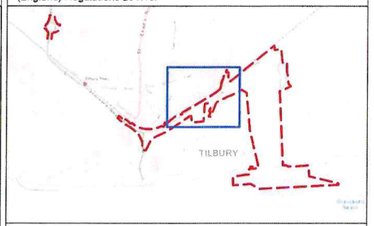
The Port of Tilbury (Expansion) Order 2019: The Tilbury2 General Vesting Declaration 2023

INSET 1 - SCALE 1:1000





Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017/3.



Key

- Land which is included in The Port of Tilbury (Expansion) Order 2019 but which is not included in this GVD
- GVD Land
- 03/xx Plot reference

Client: TILBURY2

Designer: Ardent

Project: The Port of Tilbury (Expansion) Order 2019

Drawing Title: **The Tilbury2 General Vesting Declaration 2023 Plan Sheet 1 of 1**

Status: FINAL	Revision: 002
	Date: 20.12.2023
Scale 1:2,500 @ A3 Spatial Reference System	British National Grid

20m 0m 20m 40m 60m 80m 100m

Drawn By	Checked By	Approved By
G.Jones	K.Craddock	S.Cooper

Drawing reference: N:\CAD Team\Tilbury\Tilbury2\Tilbury2_GVD_Plan_R3_20122023.dwg

EXECUTED AS A DEED

by PORT OF TILBURY LONDON LIMITED

ACTING BY

PETER JOHN WARD, A DIRECTOR

AND

PAUL STUART DALE, A DIRECTOR,

THE NATIONAL GRID ELECTRICITY TRANSMISSION PLC (GRAIN TO TILBURY) COMPULSORY PURCHASE ORDER 2024

GLOSSARY OF TERMS

Term	Definition
1981 Act	Acquisition of Land Act 1981
1989 Act	Electricity Act 1989
ASTI	Ofgem Accelerated Strategic Transmission Investment Framework December 2022
BESS	British Energy Security Strategy April 2022
Compensation Code	Collective term used for the principles set out in Acts of Parliament, principally the Land Compensation Act 1961, the Compulsory Purchase Act 1965, the Land Compensation Act 1973, the Planning & Compulsory Purchase Act 1991 and the Planning & Compulsory Purchase Act 2004. This is supplemented by case law, relating to compensation for compulsory acquisition.
CPO	Compulsory Purchase Order
CPO Guidance	Ministry of Housing Communities and Local Government Guidance and Compulsory Purchase - January 2025
CDM	Construction (Design and Management) Regulations 2015
DCO	Development Consent Order
DWPL	Denton Wharf Property Limited
EA	The Environment Agency
ECF	Early Construction Funding
EIA	Environmental Impact Assessment
EISD	Earliest in Service Date
Energy Security Plan	Powering Up Britain' Energy Security Plan (March 2023)
ESDL	Electronic Service Delivery for Abnormal Loads
EWP	Energy White Paper- Powering our Net Zero Future
FES	Future Energy Scenarios
FEED	Front End Engineering Design
GEMA	Gas and Electricity Markets Authority

Term	Definition
GI	Geotechnical Investigation
HV	High Voltage
Kv	Kilovolt
LCA 1961	The Land Compensation Act 1961
LPT	London Power Tunnels
LTC	Lower Thames Crossing project
LV	Low Voltage
MMO	Marine Management Organisation
MOPAC	Mayor's Office for Police and Crime
MVA	Megavolt amperes
National Grid	The National Grid group of companies;
NETS SQSS	National Electricity Transmission System Security and Quality of Supply Standards
Net Zero Growth Plan	'Powering Up Britain' The Net Zero Growth Plan (March 2023)
Net Zero Strategy	The Net Zero Strategy: Build Back Greener, 2021
NGET	National Grid Electricity Transmission PLC
NH	National Highways
NPPF	National Planning Policy Framework December 2023
NPS	National Policy Statement
NRIL	Network Rail Infrastructure Limited
NSIP	Nationally significant infrastructure project
OD	Ordnance Datum
Ofgem	Office for Gas and Electricity Markets
OHL	Overhead Line
Order	The National grid Electricity Transmission Plc (Grain to Tilbury) Compulsory Purchase Order 2024
Order Land	The land which is subject to compulsory purchase powers pursuant to the Order as shown on the Order Maps
Order Maps	The 9 plans which form part of the Order numbered Sheet 1 of 9, Sheet 2 of 9, Sheet 3 of 9, Sheet 4 of

Term	Definition
	9, Sheet 5 of 9, Sheet 6 of 9, Sheet 7 of 9, Sheet 8 of 9 and Sheet 9 of 9 and marked "Map referred to in the National Grid Electricity Transmission Plc (Grain to Tilbury) Compulsory Purchase Order 2024
PCC	Pre-Cast Concrete
PLA	Port of London Authority
PoTLL	Port of Tilbury London Limited
The Project	The tunnel and associated new infrastructure and works as is described in more detail in section 3 of this Statement of Reasons (CDXX)
RSPB	Royal Society for the Protection of Birds
SEC	Sealing End Compound
SGN	Southern Gas Networks plc
STP	Spoil Treatment Plan
Strategic Infrastructure	Business unit in NGET focussed on major projects for electricity transmission
TBM	Tunnel Boring Machine
VIP	Visual Impact Provision
VSM	Vertical Shaft Machines
TKRE	Tilbury to Grain and Tilbury to Kingsnorth
XLPE	Cross Linked Polyethylene