

Glyn Rhonwy Pumped Storage DCO

Drafting queries on DCO as submitted (Doc No 3.01 Rev 0)

<i>Abbreviations used</i>			
<i>PA2008</i>	<i>The Planning Act 2008</i>	<i>MP</i>	<i>Model Provision (in the MP Order)</i>
<i>A</i>	<i>Article</i>	<i>MP Order</i>	<i>the former Infrastructure Planning (Model Provisions)(England and Wales) Order 2009</i>
<i>ALA 1981</i>	<i>Acquisition of Land Act 1981</i>		
<i>BoR</i>	<i>Book of Reference (Doc 4.03 Rev 0)</i>		
<i>DCO</i>	<i>Draft DCO (Doc No 3.01 Rev 0)</i>	<i>NPS</i>	<i>National Policy Statement</i>
<i>EM</i>	<i>Explanatory Memorandum (Doc No 3.02 Rev 0)</i>	<i>NSIP</i>	<i>Nationally Significant Infrastructure Project</i>
<i>ES</i>	<i>Environmental Statement</i>	<i>R</i>	<i>Requirement</i>
<i>LIR</i>	<i>Local Impact Report</i>	<i>SI</i>	<i>Statutory Instrument</i>
<i>LPA</i>	<i>Local planning authority</i>	<i>SoS</i>	<i>Secretary of State</i>

Item No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Issue
1.	General		Will a list be maintained of all plans and other documents that will require SoS certification under Article 39 (including plan/document references), updated throughout the examination process, and supplied to the Examining authority before the close of the examination?
2.	General		Can the next version comply with current SI drafting conventions (see Section 2 of PINS Advice Note 15 – Drafting development Consent Orders), e.g. can the word “shall” be replaced by “must”, “is to be”, “are to be” etc where the context permits ?

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3.	General		<p>Can the applicant confirm that any subsequent versions of the DCO submitted after the application version:</p> <ul style="list-style-type: none"> • will be supplied in both .pdf and Word formats, the latter showing any changes from the previous version by way of tracked changes, with Word comments briefly outlining the reason for the change? • will be supported by a report of the outcome of validating that version of the DCO through the Publishing section of the legislation.gov.uk website?
4.	General		Can any plans referred to in A2 and elsewhere each be identified by Drawing and Revision Numbers in subsequent versions of the draft DCO?
5.	General		A number of articles make provision for “ <i>compensation to be determined, in case of dispute, under Part 1 of the 1961 Act</i> ”. It is acknowledged that a provision in this form is in the various MPs and is commonplace in DCOs and other Orders. However, Part 1 of the 1961 Act only relates to compensation for compulsory acquisition. In order for there to be certainty that it would apply in other situations (e.g. the temporary stopping up of streets under A13), should a modification be included as with the other compensation provisions in Schedule 7? If not, why not?
6.	General		<p>A number of provisions confer deemed consent if a consultee does not respond within 28 days (a ‘guillotine’).</p> <p>(a) Please provide evidence that the guillotine has been discussed with each relevant consultee so that they are aware of it and have had the opportunity of commenting on their ability to comply</p> <p>(b) Should those provisions contain an express requirement that the application for consent should contain a statement drawing the consultee’s attention to the guillotine?</p>
7.	Short Title		As the NSIP that would be given development consent would be a generating station, should this be reflected in the short title as with other made power generation DCOs?
8.	A1	<i>Citation and commencement</i>	See query 5 above
9.	A2(1)		Should there be definitions of “AOD” which is used in Schedule 1, “indicative drawings and sections” (A6) and “design and access statement” (R19)?
10.	A2(1)	<i>“apparatus” means any equipment, pipes, cables, ducts or other infrastructure situated in or over the Order limits including any means of access to the same.</i>	<i>“other infrastructure”</i> is a very general term. Should the definition be more limited e.g. “....cables, ducts or other <u>similar</u> infrastructure situated in....”

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11.	A2(1)	<i>“authorised development” means the development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;</i>	Is other development intended to be authorised by the DCO that is not described in Schedule 1 part 1?
12.	A2(1)	<i>“commence” means begin to carry out any material operation (as defined in section 155 of the 2008 Act) in respect of the authorised development or forming part of the authorised development, except for investigations for the purpose of assessing ground conditions, <u>the diversion and laying of services</u>, the erection of any temporary means of enclosure or the temporary display of site notices or advertisements; and “commencement” and “commenced” must be construed accordingly.</i>	What extent of ‘diversion and laying of services’ is envisaged Where is this covered in the ES?
13.	A2(1)	<i>“the land plans” means the plans certified as the <u>land plan</u> by the Secretary of State for the purposes of this Order;</i>	The underlined phrase should be “land plans”?
14.	A2(1)	<i>“the limits of deviation” means the limits of deviation referred to in article 6 (power to deviate);</i>	a) Article 6 does <u>not refer</u> to this phrase, nor is it used elsewhere in the DCO? b) Regulation 5(2)(j) of the APFP Regulations requires any limits of deviation to be shown on the works plans; please confirm how any such limits are shown
15.	A2(1)	<i>“maintain” includes inspect, repair, adjust, <u>alter, remove, reconstruct and replace</u>, and “maintenance” shall be construed accordingly;</i>	“maintain” - <ul style="list-style-type: none"> • what is the justification for this extended definition (the underlined words seem to extend the normal meaning of ‘maintain’)? • Can you identify where all the activities in the definition have been covered by the ES? (See the advice given in section 20 of PINS Advice Note 15 – Drafting development Consent Orders). For example, the definition suggests that there could be major construction works during operation.

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16.	A2(1)	<i>"Order land" means the land <u>required for or affected by the authorised development shown on the land plans which is within the limits of the land required for the authorised development</u> and which is described in the book of reference.</i>	<p>c) Is the 'Order land' intended to be the whole of the land within the Order limits or to have some different boundary? The Works plans keys identify the red boundary as the 'Order limits'; however, the Land plans also have a red line boundary, but the key describes it as 'Land to be acquired or used'?</p> <p>d) Can you identify any Order land which is "required for, or affected by the authorised development" but which is not to be acquired?</p> <p>e) Are the 'limits of the land required for the authorised development' the same as the Order limits – if so, should that phrase be used for clarity?</p> <p>f) Can this definition be clarified generally?</p>
17.	A2(1)	<i>"Order limits" means the order limits shown on the <u>works plan</u>, within which the authorised development may be carried out;</i>	<p><i>"....shown on the works plans, within...."?</i></p> <p>The red line boundary showing the order limits is actually only shown on the Works Plan Key Plan. It should be on the other works plans as well?</p>
18.	A2(1)	<i>"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;</i>	<p>Do any of the streets affected by the development have verges?</p> <p>Are any dual carriageways?</p> <p>If not, why is it necessary to extend the definition in the 1991 Act?</p>
19.	A2(1)	<i>"the works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order <u>and references in this Order to Work Nos. shall be a reference to the works described in Part 1 of Schedule 1 (authorised development) and shown on the works plan.</u></i>	<p>Should the underlined words be combined with A2(4) ?</p> <p><i>"....shown on the works plans"?</i></p>
20.	A3(2)	<i>(2) Subject to article 6 (power to deviate) the <u>authorised development</u> may only be constructed in the lines or situations shown on the works plans.</i>	<p>Should this be clarified e.g. "...each numbered work may only be constructed within the area shown for that numbered work on the works plans"?</p>

Item No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Issue
21.	A6 (Power to deviate)	<p><i>(b) in relation to the underground structures, <u>vertically upwards or downwards to any extent which may be necessary or expedient from the ordnance datum levels shown in the indicative engineering drawings and sections.</u></i></p> <p><i>(2) Any deviation under paragraph (1) is only permitted if it is <u>unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.</u></i></p>	<p>a) This is a very extensive power which (in addition to environmental effects) may impinge on mineral or other underground rights. Should LPA consent be required to deviation beyond limits assessed in the ES (or otherwise to be specified)? It is noted that the EM says that vertical deviation is allowed “subject to the maximum parameters set out in the requirements”, but the parameters in R5 do not provide depth parameters.</p> <p>b) Can you identify where the environmental statement assesses vertical deviation, the baseline from which deviations will be judged under paragraph (2)?</p> <p>c) There should be a definition of “indicative engineering drawings and sections” in this Article or A2(1)?</p>
22.	A7 (Operation)	<p><i>7.—(1) The undertaker is hereby authorised to operate and use the authorised development for generating <u>and transmitting</u> electricity.</i></p> <p><i>(2) This article does not relieve the undertaker of any obligation to obtain any permit or licence or any other obligation under any other legislation that may be required to <u>authorise the operation of a generating station.</u></i></p>	<p>a) Section 140 PA2008 only refers to authorising the operation of a generating station. What element of the authorised development is involved in the transmission of electricity?</p> <p>b) On what basis is it suggested that the DCO can authorise transmission? It is noted that the EM explanation of A7 does not refer to transmission at all.</p> <p>c) Is ‘transmission’ intended to refer to a grid connection, which would be likely to be considered ‘associated development’ that could not be authorised by a DCO in Wales?:</p> <p>d) A7(2) should be extended to include “...or to authorise the transmission of electricity”?</p>
23.	A8(7) (Transfer)	<p><i>(7) The date specified under (6)(b) must not be earlier than the expiry <u>of five days</u> from the date of the receipt of the notice</i></p>	Should this paragraph refer to 5 <u>working</u> days?
24.	A9 (defence to nuisance claim)	<p><i>9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (c), (d) (e), (g) and (ga) of section 79(1) of that Act no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—</i></p>	<p>The article provides defences against claims relating to:</p> <p>(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;</p> <p>(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;</p> <p>(e) any accumulation or deposit which is prejudicial to health or a nuisance;</p> <p>(g) noise emitted from premises so as to be prejudicial to health or a nuisance;</p> <p>(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road;</p> <p>The EM merely says that the defence is in respect of air quality and noise. What elements of the project justify or require the extension of the defence in relation to the other items in the list?</p>

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25.	A13(7) (Temporary stopping up)	<i>(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4) (b) that street authority shall be deemed to have granted consent.</i>	<p>a) There seems to be a degree of conflict between this provision and the more general A4 (which merely requires a decision not to be unreasonably withheld or delayed). Why are both provision required?</p> <p>b) Has this 28 day 'guillotine' (which is applied in several articles) been discussed with the relevant authorities?</p>
26.	A13(8)	<i>(8) The undertaker shall not be obliged to obtain any order under Section 14 of the 1984 Act for the temporary stopping up or diversion of any street which is authorised under this Order.</i>	Orders under s14 of the 1984 Act are prescribed consents in Wales, provisions for whose removal can only be included in a DCO with the consent of the 'relevant body', in this case the traffic authority. Please provide evidence that the traffic authority have consented to the inclusion of this provision.
27.	A14(2) (Access to works)	<i>(2) If the relevant planning authority having received an application for approval under paragraph (1) (b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted approval.</i>	Again there seems to be a degree of conflict between this provision and the more general A4 (which merely requires a decision not to be unreasonably withheld or delayed). Why are both provisions required?
28.	A17(7) Discharge of water)	<i>(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010</i>	The form of the paragraph is based on the Model Provision, and intended to reflect the repeal of s 85 of the Water Resources Act 1991 (referred to in the MP) and the introduction of the regime in the Environmental Permitting (England and Wales) Regulations 2010, but the provisions of the Act and Regulations are expressed differently (S85 identifies a number of offences, whereas Regulation 12 precludes certain activities in the absence of an environmental permit). Would the intention of the article be more clearly addressed by recasting A17(7) such as "This article does not authorise any groundwater activity or water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010"?
29.	A17(9) Discharge of water)	<i>(9) This article does not relieve the undertaker of any requirement to obtain from Natural Resources Wales any permit or licence under any other legislation that may be required to authorise the making of a connection to or, the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (2).</i>	<p>a) Should the express reference to NRW be removed as it is unnecessary and the responsible authority may change in future?</p> <p>b) Paragraph (2) relates to disputes. Should this be a reference to paragraph (3)?</p>

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30.	A18 (Authority to survey)		As drafted the article has no requirement for reinstatement. Should a paragraph be added e.g. "As soon as practicable following the exercise of any powers under paragraph (1), any apparatus or equipment must be removed and the land must be restored to the reasonable satisfaction of the owners of the land."?
31.	A19(1) (Compulsory acquisition)	19.—(1) Subject to paragraph (3) of this article the undertaker may acquire compulsorily <u>so much of the Order land as is specified in the book of reference and which is required for the authorised development or to facilitate, or is incidental, to it.</u>	<ul style="list-style-type: none"> a) The BoR includes Plot 42 as replacement land for Plot 65. Although paragraph (3) refers to this arrangement, is the applicant satisfied that A19 does authorise the acquisition of the exchange land (it is noted that the reference to "required as replacement land" in MP18 has not been included in A19) b) See earlier question as to the meaning of "the Order land". The implication of this paragraph is that not all of the Order land is specified in the BoR? c) There are a number of 'trigger' activities and authorisations outside the DCO process on which the project is dependent. These include some land acquisition for which CA powers are not proposed and the grid connection. In the Hirwaun Power Station DCO the Secretary of State added an article (article 30) which made the power to compulsorily acquire certain plots subject to the prior obtaining of planning permission. Should the CA powers in this DCO also be subject to the trigger events?

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32.	A19(3)	<p>(3) (a) <i>In this paragraph 'the access land' means the land numbered Plot 65 and described in Part 1 of the Book of Reference and 'the exchange land' means the land numbered Plot 42 and described in Part 1 of the Book of Reference.</i></p> <p>(b) <i>If the undertaker acquires <u>compulsorily</u> the access land then <u>as from the latest of the dates mentioned in sub-paragraph (c) of this paragraph, the exchange land shall vest in the persons in whom the access land was vested immediately before it was vested in the undertaker, subject to the like rights, trusts and incidents as attached to the access land except for the rights to a private water supply across the access land and described in Part 4 of the Book of Reference which shall remain vested across the access land.</u></i></p> <p>(c) <i>The dates referred to in sub-paragraph (b) of this paragraph are:</i></p> <p>(i) <i>the date on which the plot of the access land is vested in the undertaker;</i></p> <p>(ii) <i><u>the date on which the exchange land is vested in the undertaker.</u></i></p>	<p>a) For the SoS to be satisfied that s131(4) PA2008 applies, there must be reasonable certainty that the exchange land will be given for the access land. A19(1) provides a power for the undertaker to acquire the exchange land, but there is no obligation to exercise that power. The exchange land will only vest in the former owner of the access land if the exchange land becomes vested in the undertaker. What mechanism is proposed to give the SoS comfort that the undertaker will in fact acquire the exchange land?</p> <p>b) This provision for exchange land appears to apply only if the access land is acquired compulsorily. Insofar as A19 authorises the acquisition of the access land, s131 will apply whether or not the land is ultimately acquired under that authority. Should the word "compulsorily" be deleted from A19(3)(b)?</p> <p>c) "...Part 3 of the Book of Reference?"</p> <p>d) Can the next version of the DCO use consistent capitalisation for the book of reference throughout (e.g. lower case in A 2 and A23)</p> <p>e) Is the phrase "<i>which shall remain vested across the access land</i>" necessary, as the exchange will not transfer the rights, trusts and incidents from the access land to the new land but create equivalent new rights over the exchange land (the water supply through the access land is protected by A23)?</p>

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33.	A21 Mineral code)	<p>21.—(1) Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(b) (minerals) are incorporated in this Order and shall apply to the exercise by the undertaker of the powers conferred under articles 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 23 (Private rights), 25 (acquisition of part of certain properties) and 27 (application of Compulsory Purchase (Vesting Declarations) Act, subject to the modifications that-</p> <p>...</p> <p>(d) in paragraph 1(1) after “compulsory purchase order” insert “or notice served under section 11(1) of the 1965 Act.</p>	<p>a) A21(1) incorporates Parts 2 and 3 of Schedule 2 to the ALA 1981 subject to modifications. However modification (d) refers to paragraph (1(1) of that Schedule, which is in Part 1 which is not incorporated in the Order (and not therefore subject to modifications). What is intended here?</p> <p>b) The EM says that the article has been adapted to apply to the possible extinguishment of mineral rights under A23 (Private rights). Schedule 2 of the ALA 1981 is not otherwise modified by the DCO, and relates only to the compulsory acquisition of land. How is it to be applied in the event of extinguishment of rights under A23, or indeed A22, 25 or 27?</p> <p>c) Subject to a) above, A21(1)(d) purports to make paragraph 1(1) of Schedule 2 apply not only to a CPO but to a notice of entry under the 1965 Act. But paragraph 1(1) is concerned with enabling a CPO to incorporate Parts 2 and 3 of the Schedule. If the proposed modification is made, how will a notice of entry incorporate those Parts?</p> <p>d) Why is A21(2) required, as “mines” are not referred to in the article at all?</p>
34.	A22(4) (CA of rights)	<p>(4) Any person who suffers loss by the extinguishment <u>or suspension</u> of any private right under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</p>	<p>a) Should A22(1) read “The undertaker may acquire compulsorily such rights over the Order land <u>as is specified in the book of reference and which may be required for any purpose</u>” (as in A19(1)?</p> <p>b) As this paragraph relates to private rights only, should it be in A23 not A22?</p> <p>c) As the BoR does not make provision for any rights to be suspended, why is the phrase “or suspension” included?</p>
35.	A23(1) (Private rights)	<p>23.—(1) Subject to the provisions of this article, all private rights over the Order land and which are specified as to be extinguished in the book of reference shall be extinguished-</p> <p>on the date of entry on the Order land by the undertaker under section 11 (1) of the 1965 Act (power of entry),</p>	<p>Various plots in Part 3 of the BoR benefit from rights of vehicular access that are to be extinguished. Paragraph 7.11 of the Statement of Reasons says that these rights will be diverted onto permanent tracks following construction. How is this secured by the DCO?</p> <p>This should presumably be A23(1)(b)?</p>
36.	A23 (2)	<p>(2) The undertaker may interfere with private rights over the Order land specified in the book of reference only to the <u>extent set out in the book of reference.</u></p>	<p>Should this read “...extent set out in <u>Part 3 of the [BoR]</u>”?</p>

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37.	A23(4)(a)	<p>(a) any notice given by the undertaker before—</p> <p>(i) the completion of the acquisition of the Order land or the acquisition of rights over or affecting the Order land,</p> <p>(ii) the undertaker's <u>appropriation of it</u>,</p> <p>(iii) the undertaker's entry onto it, or</p> <p>(iv) the undertaker's <u>taking temporary possession of it</u>,</p> <p>that any or all of those paragraphs shall not apply to any right specified in the notice; and.....</p>	Can the applicant explain the references in this paragraph to appropriation and temporary possession (e.g. there appears to be no provision elsewhere in the DCO for appropriation or temporary possession)?
38.	A23(6)	<p>(6) Any person who suffers loss by the <u>extinguishment or suspension of any private right under this article shall be entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.</u></p>	<p>a) Can the applicant explain the restriction to the terms of s152 PA2008, which is limited to claims for injurious affection and depreciation of land value (extinguishment of a private right involves more than injurious affection or depreciation)?</p> <p>b) As the article does not make provision for any rights to be suspended, why is the phrase “or suspension” included?</p> <p>c) The article does not make any provision for compensation for the interference with rights</p>
39.	A23(7)	<p>(7) Reference in this article 23 to private rights over land includes references to any restrictions, trusts or incidents to which the land is subject.</p>	This paragraph is not explained in the EM. As A23(1) and (2) limit private rights to be extinguished or interfered with to those specified in the BoR, and no restrictions, trusts or incidents are specified there, why is this paragraph necessary?
40.	A25 and elsewhere		In the next version of the DCO, can the applicant either amend the references to “the tribunal” to “the Tribunal” for consistency with A2(1), or amend that definition
41.	A26 (Guarantees)	<p>26.—(1) The undertaker shall not exercise the powers under articles 19, 22, 23 <u>and</u> 24 until –</p>	“...19, 22, 23 <u>or</u> 24 until...”?
		<p>(4) A security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable <u>against the guarantor</u> by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.</p>	Should the phrase “against the guarantor” be deleted – as it relates to only one of the six potential forms of security permissible under A26(2)?
		<p>(5) The security required under this article is to be in place for a <u>maximum of 20 years</u> from the date on which the relevant power is exercised.</p>	“...in place for a <u>minimum of 20 years</u> ...”?

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42.	A28 (Power to override easements and other rights)		<ul style="list-style-type: none"> a) This is an unusual and perhaps novel provision. Is there a precedent for it? b) Can the applicant confirm what steps have been taken to identify the existence of any such easements etc? c) It is noted that no qualifying persons are identified in Part 2 of the BoR (potential claimants under s10 of the Compulsory Purchase Act 1965, Part 1 of the Land Compensation Act 1973 or s152(3) PA2008). If there are no such persons, why is this article necessary?
43.	A31 (Felling or lopping of trees)		<ul style="list-style-type: none"> a) Should A31(1) be expressly subject to A32, so that it will not apply to trees in conservation areas? b) The article goes further than the title suggests, as it includes a power to remove hedgerows within the Order limits without the need for consent under the Hedgerows Regulations 1997. Should the title therefore include reference to removal of hedgerows? c) Please identify, by reference to the relevant application documents, any hedgerows whose removal would otherwise require consent under the 1997 Regulations d) Consent under the 1997 Regulations is a prescribed consent in Wales under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. Please provide evidence that the appropriate authority has consented to the inclusion of this provision.
44.	A32(4) (Trees subject to tree preservation orders)	<i>4) The authority given by paragraph (1) shall constitute deemed consent under the relevant tree preservation order.</i>	<ul style="list-style-type: none"> a) Please identify, by reference to the relevant application documents, the tree areas and groups of trees referred to in this article b) Consent under s198 of the Town and Country Planning Act 1990 is a prescribed consent in Wales under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. Please provide evidence that the appropriate authority has consented to the inclusion of this provision.

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45.	A33 (Statutory undertakers)	<p>33.—(1) <i>The undertaker may for the purposes of article 10 (street works) remove or reposition apparatus belonging to statutory undertakers which is laid beneath the relevant streets</i></p> <p>(2) <i>Subject to the provisions of Schedule 8 (protective provisions) the undertaker may—</i></p> <p>(a) <i>Construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order limits; and</i></p> <p>(b) <i>Remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order limits.</i></p> <p>(3).....</p>	<p>a) Why are the works referred to in A33(1) not subject to the protective provisions?</p> <p>b) Why is (1) necessary at all, given that the relevant streets will in any event be covered by A33(2)(b)?</p>
46.	A35(4) (Recovery of costs of new connections)	<p>35.—(1) <i>Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation</i></p> <p>(2) <i>Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33 (statutory undertakers), any person who is—</i></p> <p>(a) <i>the owner or occupier of premises the drains of which communicated with that sewer; or</i></p> <p>(b) <i>the owner of a private sewer which communicated with that sewer,</i></p> <p><i>shall be entitled to recover from the undertaker compensation....</i></p> <p>(4) <i>In this paragraph—</i></p> <p><i>“public communications provider” has the same meaning as in section 151 (1) of the Communications Act 2003; and</i></p> <p><i>“public utility undertaker” has the same meaning as in the 1980 Act.</i></p>	<p>a) Although this article follows Model Provision 32, what is the justification in this application for the limited definition of “public utility undertaker”? The definition in the Highways Act 1980 refers only to suppliers of gas or hydraulic power, and not, e.g. water or electricity.</p> <p>b) Given that limited definition, how can paragraph (1) of the article apply to the removal of public sewers, which is the premise of paragraph (2)</p>
47.	A36 (protection of interests)	<p>36. <i>Schedule 8 (protection <u>of</u> electricity, gas, water and sewerage undertakers) to this Order shall have effect.</i></p>	<p>a) “<i>protection <u>of</u> electricity....</i>”?</p> <p>b) Is there any reason for excluding public communications providers from protection under Schedule 8?</p>

Item No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Issue
48.	A37 (Removal of human remains)	<i>and that person shall, as soon as reasonably practicable after such <u>re-internment</u> or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).</i>	“such <u>re-internment</u> or cremation”?
49.	A38 (Service of notices)		<p>a) The EM says that s229(6) of the PA2008 provides that the service of notice provisions in s229 are “subject to any contrary provision made by or under this Act”. That would usually refer to Regulations made under the Act (as in e.g. Rule 22 of the Examination Procedure Rules); does the applicant contend that the A37 of the DCO will be a ‘contrary provision made under the Act’?</p> <p>b) Please identify the differences between the statutory provisions for service of notices in s229 and the provisions proposed in A37.</p> <p>c) What is the reason for preferring a bespoke article to the statutory provision?</p>
50.	A39 (Certification of plans etc)		The list of specified documents should also include the indicative sections as well as the indicative engineering drawings, the design and access statement, temporary stopping-up plans, TPO and hedgerow plans, the ES, and the draft CoCP in Appendix 16.1 of the ES (see also Item 1 above)
51.	A40 (Crown rights)		Can the applicant provide evidence that the Crown has agreed to the inclusion of this article in the DCO?
52.	A41		This article should have a heading – e.g. “Arbitration”?
53.	Sch 1 Part 1 (Authorised development) and R3	<i>A pumped storage electricity generating station with an output capacity of up to 99.9MW comprising a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act consisting of-</i>	What is the reason for the choice of 99.9MW as the maximum output capacity of the generating station?
54.	Work No 1G	<i>Work No 1G - reprofiling of existing slate mounds, grouting of connecting tunnels and access including ancillary activities during construction to be reinstated once operational.</i>	What is meant by “ancillary activities during construction to be reinstated once operational”? Can this Work be defined more clearly?
55.	Work No 1H	<i>Work No 1H – replacement open space land; <u>only works necessary to comply with any requirement under this Order or any environmental licence for the authorised development shall be undertaken within this area.</u></i>	The words after the semi-colon are not a description of the work to be undertaken but should rather be included as a separate requirement in Part 2?

Item No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Issue
56.	Work No 3	Work No 3 – (a) an above ground power house building containing workshop, turbine hall access shaft, connection to <u>Work No 3B</u> , internal crane and administration and control building; (b) electrical switchgear station building	No Work No 3B is identified as such; is this intended to be a reference to the electrical switchgear building? What is meant by a ‘connection’?
57.	Work No 3	(d) Other ancillary buildings, structures and plant including car parking, security fencing and entry point including permanent operational perimeter fencing, internal access, connections to existing site drainage and utilities, landscaping and other boundary treatments and security lighting;	Why is an open-ended general provision for ‘other ancillary buildings’ necessary?
58.	Work No 4A		(b) water level of up to 154m OD? (c) a scour tower within the reservoir? (d) spillway infrastructure to Llyn Padarn?
59.	‘further development’	In connection with Work Nos 1A – 4F and to the extent that they do not otherwise form part of any such work, further development whether or not shown on the plan referred to in the requirements including— (a) bunds, embankments, landscaping, fencing and boundary treatments;	a) This is an extensive list of further development. If these items are necessary, why can they not be identified in more detail in connection with the works to which they are relevant? b) Which of these works are already within the scope of the existing planning permission?
60.	Sch 1 Part 2 (Requirements)		Generally, can the requirements in the next version of the DCO be revised to substitute the word “shall” with “must”, “is to” or otherwise as appropriate to reflect modern SI drafting conventions
61.	R2 (Time limits)	2. The authorised development must be commenced within 5 years from the date <u>on which this Order takes effect</u> .	“...on which this Order <u>comes into force</u> ”?
62.	R3 (Export limit)	3. The generating station shall not export at a power rate greater than 99.9MW net of any station load electrical losses	Why is the 99.9MW output expressed as net (by comparison, A2(1) of the Hirwaun Power Station DCO expressly referred to ‘gross rated electrical output’)
63.	R4(2) (Phasing Plan)	(2) The phasing plan shall include timescales for the reinstatement or restoration of temporary construction compounds in line with the provisions of the <u>landscape plan</u> , which reinstatement or restoration shall commence within 4 weeks of the cessation of use of the temporary construction compound concerned.	a) ‘landscape plan’ is undefined b) Should this requirement include provision for a longstop period for the use of the temporary construction compounds, or require the written scheme to provide such a longstop?

Item No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Issue
64.	R5 (Detailed design)		<p>a) Several parameters are described as 'Maximum site area' where this parameter covers a number of areas (e.g. construction compounds), is this intended to be an aggregate maximum area or a maximum for each one?</p> <p>b) Provision is made for the submission of details of permanent buildings and structures; why is there no equivalent requirement for temporary buildings and structures</p>
		(6) <i>The authorised development must be carried out in accordance with the approved plans and any other approvals given by the relevant planning authority pursuant to this requirement.</i>	c) Should this requirement read “...in accordance with the approved plans <u>and details</u> and any other approvals....”?
65.	R6 (CoCP)	(2) <i>The CoCP, which specified measures to mitigate the impacts of constructions works, must be substantially in accordance with the principles and restrictions set out in Appendix 16.1 of Volume 3 of the Environmental Statement, and must incorporate the following plans—</i>	“...CoCP, <u>which is to specify measures to mitigate....</u> ”?
66.	R7 (Other required plans and strategies)	7.—(1) <i>Prior to the commencement of any development other than ground investigation or site clearance for temporary construction compounds or access works, the following plans and strategies shall be submitted to and approved in writing by the relevant planning authority;</i>	“commence” has a specific definition in A2(1) which already expressly excludes ground investigation; does it need to be referred to in this requirement? (This also applies to R13 (Land discovery strategy))
67.	R11 (Noise management plan)		This plan is to be incorporated in the CoCP, but under R11(2) is to apply after construction as well. Would the DCO be clearer if the Noise management plan was to be a stand-alone plan outside the CoCP, which on its title would appear to relate to construction works only ?
68.	R16(1) (Construction hours)	<p>16.—(1) <i>Construction work for the authorised development must not take place outside the hours of— 07:00 to 19:00 on Monday to Friday, and 07:00 to 13:00 on Saturdays, excluding public holidays, except with the prior written approval of the relevant planning authority.</i></p> <p>(2) <i>The relevant planning authority may extend working hours for specified activities, or elements of any phase or for specified days.</i></p>	<p>a) As drafted , this requirement could be interpreted as restricting working hours on all days except public holidays. Should it be re-drafted e.g. “<i>Construction work must not take place on public holidays, or outside the hours of....</i>”?</p> <p>b) Planning Inspectorate Advice Note 15 (Drafting DCOs), section 19, contains advice on the use of ‘tailpieces’, that enable the LPA to vary matters included in the DCO. Can the applicant confirm why it considers tailpieces to be acceptable in this requirement, having regard to any impacts of working hours that have been assessed in the environmental statement?</p>

Item No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Issue
69.	R17 (Construction compound and temporary structures)	17.—(1) No phase of the authorised development may commence until for that phase details of the size, layout and location of temporary buildings and structures to be formed in that phase have been submitted to and approved by the relevant planning authority. (2) The temporary buildings and structures must be installed in accordance with the approved details.	Should this requirement also make provision for the removal of the temporary buildings and structures after a defined period? (R21 appears to duplicate this requirement)
70.	R18 (Fencing and other means of enclosure)		This requirement seems superfluous having regard to requirement 22 which duplicates and extends its provisions?
71.	R19 External lighting)		This should define the 'design and access statement' referred to in the requirement?
72.	R20(1) (Excess water management strategy)	20.—(1) Prior to the operation of the authorised development for the generation of electricity <u>the excess water management strategy</u> shall be submitted to and approved in writing by the relevant planning authority.	"... <u>an</u> excess water management strategy must.."?
73.	R22 (Fencing and other means of enclosure)		This requirement refers to details as being 'agreed', whereas others refer to them as being 'approved'. Is there any reason for this inconsistency?
74.	R23 (Decommissioning plan)	23.—(1) No later than 12 months prior to the <u>expiry of the life of the development consent</u> or, where use for the <u>generation of electricity permanently ceases no later than 2 months following permanent cessation of use of the authorised development</u> , the undertaker shall the relevant planning authority written details of a decommissioning plan	Please explain how the LPA is to judge 'the life of the development consent' or whether electricity generation has 'permanently ceased' so as to calculate when the decommissioning plan is due
75.	Sch 7 (Modification of CA enactments etc) – Paragraph 2(2)(a)	(2) In section 44(1) (compensation for injurious affection) as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4— (a) for the words "land is acquired or taken" there shall be substituted the words " <u>a right is purchased from</u> ";	As drafted the word 'from' would be duplicated in the section as amended. Should the wording to be substituted in (a) be reduced to " <u>a right is purchased</u> "?
76.	Sch 7 – Paragraph 6shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the <u>deed the right</u> which is to be compulsorily acquired is vested absolutely in the acquiring authority.	"...overridden by the deed , the right which is to compulsorily acquired....." (comma inserted for clarity)
77.	Sch 8		Can the formatting and margins be corrected in the next version?

Item No.	Article (A)/ Requirement (R)	Relevant extract from DCO (for ease of reference)	Issue
78.	Sch 8 – Paragraph 6		This paragraph refers to apparatus 'in or along any railway of the undertaker'. What railways are to be provided as they are not described in Schedule 1?
79.	Sch 8 – Paragraph 7		Please provide an explanation of how this paragraph is to operate and its purpose
80.	Sch 8 – Paragraph 8		<ul style="list-style-type: none"> a) How is the value of the removed apparatus to be determined (paragraph 8(2))? b) Should there be a provision for determination of disputes as to value? c) Similarly in respect of the value of the benefit (paragraph 8(5))
81.	Sch 8 – Paragraph 9(2)	<i>(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.</i>	Should this refer to the utility undertaker whose apparatus is damaged, rather than utility undertakers in general?
82.	Schedule 9 (Discharge of requirements)		<ul style="list-style-type: none"> a) There are precedents in previously made DCOs for arrangements for discharge of requirements, but Schedule 9 does not appear to follow any of them. Is there a precedent for the arrangements made by Schedule 9? b) Should paragraph 3(1) expressly make provision for the Fees Regulations to apply as if the application for discharge of requirements was an application for the approval of reserved matters?