

HORIZON

NUCLEAR POWER



Wylfa Newydd Project

3.2 Mark-Up of the Draft Development Consent Order

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Planning Act 2008

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

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201[*] No. ***

INFRASTRUCTURE PLANNING (~~Model Provisions~~) (~~England and Wales~~) ~~Order 2009/2265~~

The Wylfa Newydd (Nuclear Generating Station) Order 201[*]
Schedule 1 General model provisions

Made - - - - - [***]

Laid before Parliament [***]

Coming into force - - - [***]

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The ***, in exercise of the powers conferred by sections *** of the *** Act ***(a), makes the following [Order/Regulation/Rules/Scheme]:

An application has been made to the Secretary of State under section 37 of the Planning Act 2008 (the “2008 Act”)(b) and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(c)1 for an Order under sections 114, 115 and 120 of the 2008 Act.

^(a) TBD

^(b) 2008 c.29. Section 37 was amended by section 173(5) of, and paragraph 5 of Schedule 13 to the Localism Act 2011 (c.20). Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Part 1 of Schedule 13 to the Localism Act 2011 (c.20).

^(c) 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. 2015/377, S.I. 2014/2381, S.I. 2015/1682, S.I. 2017/524 and S.I. 2017/572.

The application was examined by [a Panel of * members (“the Panel”)] OR [the single appointed person] in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(a).

The [Panel]/[single appointed person], having considered the application with the documents that accompanied it and the representations made and not withdrawn, has submitted a report with a recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the [Panel]/[single appointed person], has decided to make an Order granting development consent for the development described in the application [with modifications that in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State is satisfied that the special category land (as identified in the Book of Reference), when burdened with rights imposed by this Order, will be no less advantageous than it was before to persons in whom it is vested, other persons, if any, entitled to rights of common or other rights and the public, and that accordingly, section 132(3) of the 2008 Act applies.

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

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

PART 1

PRELIMINARY

[Article 1 is not a Model Provision]

Citation and commencement

1.~~This Order may be cited as the Wylfa Newydd (Nuclear Generating Station) Order 2011[*] and comes into force on [***].~~

[Article 2 is based on General Model Provision 1]

Interpretation

~~12.~~-- (1) In this Order, unless the context requires otherwise —

"the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847^a;

"the 1961 Act" means the Land Compensation Act 1961;^b

"the 1965 Act" means the Compulsory Purchase Act 1965;^c

"the 1980 Act" means the Highways Act 1980;^d

^a 1847 c.27. Sections 35 and 39 were amended by section 46 of the Criminal and Justice Act 1982 (c.48). There are other amendments made to the 1847 Act which are not relevant to this Order.

^b 1961 c. 33. ~~Part 1 was amended by S.I. 2009/1307. There are other amendments to the 1961 Act which are not relevant to this Order.~~ Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

^c 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307. Section 11 was amended by sections 186, 187(2) and 188 of, paragraph 3 of Schedule 16 to and paragraph 6 of Schedule 14 to the Housing and Planning Act 2016 (c.22) and S.I. 2009/1307. Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by sections 139(5) to (9), paragraph 28 of Schedule 13 and paragraph 1 of Schedule 23 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

^d 1980 c. 66. Section ~~64~~1(1) was amended by section 102 and Schedule 17 of the ~~21(2) of the New Roads and Street Works Act 1991 (c.22);~~ sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51) and paragraph 1 of Schedule 9 to the New Roads and Street Works Act 1991 (c.22); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981^e;

"the 1984 Act" means the Road Traffic Regulation Act 1984^f;

"the 1990 Act" means the Town and Country Planning Act 1990;^g

"the 1991 Act" means the New Roads and Street Works Act 1991;^h

"the 1995 Order" means the Town and Country Planning (General Permitted Development) Order 1995ⁱ;

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009^j;

"A5025 Off-line Highway Improvements sub-CoCP" means the document certified as the A5025 Off-line Highway Improvements sub-Code of Construction Practice by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

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

"apparatus", unless otherwise provided for, has the same meaning as in Part 3 of the 1991 Act;

"area of seaward construction activity" means the area of the sea within the Order Limits shown on the Work Plans;

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

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

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

~~"the b~~Book of ~~r~~Reference" means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

~~Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15).~~ There are other amendments to the 1980 Act which are not relevant to this Order.

^e 1981 c.66

^f 1984 c.27. Section 32 was amended by sections 1, 2 and 8(1) and paragraph 4(6)(d) of Schedule 5 to the Local Government Act 1985 (c.51). There are other amendments to the 1984 Act which are not relevant to this Order.

^g 1990 c. 8. Section 106 was amended by section 174(2) of ~~206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to,~~ the Planning Act 2008 (c.29) and paragraph 3 of Schedule 2 to the Growth and Infrastructure Act 2013 (c.27). ~~(date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act).~~ There are other amendments to the 1990 Act which are not relevant to this Order.

^h 1991 c. 22. Section 48~~(3A)~~ and 50 were amended ~~was inserted by~~ section 124 of the Local Transport Act 2008 (c.26). Sections 51, 54, 55, 57, 59, 60, 65, 67, 68 to 70, 75, 76, 79(4) to 81 and 85, 80(4), and 83(4) were amended by sections 40, 42, 49, 51, 52 and 54 ~~of,~~ and Schedule 1 to, the Traffic Management Act 2004 (c.18). and S.I. 2007/1951.

ⁱ S.I. 1995/418. Article 3 was amended by S.I. 1999/1783 and S.I. 2016/58. There are other amendments to S.I. 1995/418 which are not relevant to this Order.

^j 2009 c.23.

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"commence" means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (when development begins), forming part, or carried out for the purposes, of the authorised development other than operations consisting of—

- (a) site preparation and clearance;
- (b) pre-construction archaeological works;
- (c) environmental surveys and monitoring;
- (d) removal of hedgerows, trees and shrubs;
- (e) investigations for the purpose of assessing ground conditions;
- (f) diversion or laying of services;
- (g) remedial work in respect of any contamination or adverse ground conditions;
- (h) receipt and erection of construction plant and equipment;
- (i) the temporary display of site notices and advertisements;
- (j) erection of temporary buildings, structures or enclosures related to any of the works listed above;

and the words "commencement" and "commenced" are to be construed accordingly;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act (notice of authorisation of compulsory acquisition);

"Construction Method Statement" means the document certified as the construction method statement by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

"Dalar Hir Park and Ride sub-CoCP" means the document certified as the Dalar Hir Park and Ride sub-Code of Construction Practice by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

"Design and Access Statement" or "DAS" means the document certified as the design and access statement by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

"Detailed Design Drawings" means the drawings certified as the detailed design drawings by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order and identified in Part 6 of Schedule 2 (Approved plans) or approved pursuant to a Requirement;

"discharging authority" means IACC in respect of any Requirements in Schedule 3 (Requirements) of this Order relating to land above the MHWS, and NRW in respect of any Requirements relating to land below the MHWS and the Marine Works;

"electronic transmission" means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

"Environmental Statement" means the document submitted by the undertaker to support its application for development consent and certified as the environmental statement by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

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

“footpath implementation plan” means a written plan agreed between the undertaker and the highway authority for creation or improvement of a footpath or combined footpath/cycleway to a specified standard;

“general direction” means a direction given by the undertaker under article 62 (General directions to vessels);

“harbour” means the harbour as comprised within the harbour limits and to be constructed by the undertaker in pursuance of the powers conferred on it by this Order, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with it, as from time to time existing within the harbour limits;

“harbour authority”, in relation to a harbour, means the harbour authority that has a statutory duty to manage, maintain or improve the harbour;

“harbour limits” means the limits of the harbour as specified in article 48 (Limits of harbour) and identified in Schedule 16 (Limits of harbour);

“harbour master” means the person appointed as such by the undertaker and includes that person's deputies and assistants and any other person for the time being authorised by the undertaker to act, either generally or for a specific purpose, in the capacity of harbour master;

“the harbour undertaking” means the harbour undertaking of the undertaker as authorised from time to time;

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

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

“IACC” means Isle of Anglesey County Council;

“land” includes land covered by water, any interest in land or right in, to or over land;

~~“the Land pPlans”~~ means the plan certified as the land plan by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order and identified in Part 3 of Schedule 2 (Approved plans)~~decision-maker for the purposes of this Order;~~

“Landscape and Habitat Management Strategy” or “LHMS” means the document certified as the Landscape and Habitat Management Strategy by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

“level of high water” means the level of mean high-water springs;

“level of low water” means the level of mean low water neaps;

“limits of deviation” means the limits of deviation referred to in article 4 (Limits of deviation) and shown on the Works Plans and Detailed Design Drawings;

“local planning authority” has the same meaning as in the 1990 Act;

“maintain” includes inspect, repair, adjust, alter, improve, landscape, preserve, remove, reconstruct, refurbish or replace any part of the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the Environmental Statement, or vary the authorised development as described in Schedule 1 (Authorised development), and any derivative of “maintain” must be construed accordingly;

“master” in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

“Marine Off-Loading Facility” means the marine off-loading facility comprised in Work No. 1F as described in Schedule 1 (Authorised development) of this Order;

“Marine Works” means Work No.s 1E, 1F, 1G, 1H described in Schedule 1 (Authorised development) and any other Works authorised by this Order or, as the case may require, any part of those works and “Marine Work” refers to any one of the Marine Works;

“Marine Works sub-CoCP” means the document certified as the Marine Works sub-Code of Construction Practice by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

“the Maritime and Coastguard Agency” means the executive agency of the Department for Transport;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time, unless otherwise agreed with NRW;

“National Grid” means National Grid Electricity Transmission plc. (Company No. 02366977) and their successors in title, assigns and any other person exercising their powers or performing the same functions;

“operational period” means the period of time that the relevant part of the authorised development is in operation after construction and commissioning is complete pursuant to the relevant construction contract or contracts and “operation” and “operational” should be construed accordingly;

“NRW” means the Permitting Service of Natural Resources Wales;

“Off-site Power Station Facilities sub-CoCP” means the document certified as the Off-site Power Station Facilities sub-Code of Construction Practice by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

"Order ~~h~~Land" means the land ~~shown~~ identified by the plot numbers on the ~~h~~Land ~~p~~Plans ~~which is within the limits of land to be acquired and~~ ~~as~~ described in the ~~b~~Book of ~~r~~Reference;

"~~the~~ Order ~~h~~Limits" means the limits shown on the ~~Order Limits Plan~~ and ~~w~~Works ~~p~~Plan within which the authorised ~~project~~ ~~development~~ may be carried out;

“Order Limits Plans” means the plans certified as the order limits plans by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order and identified in Part 1 of Schedule 2 (Approved plans);

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981;^a

"Parameter Plans" means the plans certified as the parameter plans by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order and identified in Part 4 of Schedule 2 (Approved plans);

"Parc Cybi Logistics Centre sub-CoCP" means the document certified as the Parc Cybi Logistics Centre sub-Code of Construction Practice by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

"Phasing Strategy" means the document certified as the phasing strategy by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

"Power Station Main Site sub-CoCP" means the document certified as the Power Station Main Site sub-Code of Construction Practice by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order;

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

~~(ii) —a National Park Authority;~~

~~(iii) —the Broads Authority; and~~

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

"the relevant sub-CoCP" means the sub-Code of Practice that is relevant to the site concerned;

"Requirement" means a requirement set out in Schedule 3 (Requirements), and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of the same number in that Schedule;

"Rights Of Way Plans" means the plans certified as the rights of way plans by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order and identified in Part 5 of Schedule 2 (Approved plans);

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

"Secretary of State" means the Secretary of State for Business, Energy and Industrial Strategy, except that in article 72 (Removal of human remains) Secretary of State means the Secretary of State for Justice;

"site preparation permission" means the planning permission for the site preparation and clearance of land within the Wylfa Newydd Development Area granted by Isle of Anglesey County Council on [*], with reference number 38C310F/EIA/ECON and any variation or amendment to that permission;

^a 1981 c. 67. Section 7 was amended by ~~section 70 of, and~~ paragraph 9 of Part I of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Part III of Schedule 2 was amended by S.I. 2009/1307. There are other amendments to the Acquisition of Land Act 1981 Act which are not relevant to this Order.

“special direction” means a direction given by the harbour master under article 64 (Special directions to vessels);

“specific associated development works” means Work No.s 3A, 6 and 7;

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

“statutory undertaker” means any person falling within section 127(8), ~~128(5) or 129(2)~~ of the 2008 Act (statutory undertakers’ land) and includes a public communications provider as defined in section 151(1) of the Communications Act 2003;^a

“street” means, irrespective of whether it is a throughfare, the whole or any part of any highway, road, lane, footway, alley, passage, square, court and any land laid out as a way whether it is for the time being formed as footpath or not, together with land on the verge of a street or between two carriageways, and includes part of a street and any bridge, viaduct, overpass or underpass which a street passes over ~~a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;~~

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act (the street authority and other relevant authorities);

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

“the ~~£~~Tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means Horizon Nuclear Power Wylfa Limited or the person who has the benefit of this Order in accordance with article 8 (Benefit of Order) and 9 (Consent to transfer benefit of Order) ~~section 156 of the 2008 Act;~~

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a 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 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 Welsh Ministers” has the same meaning as in the Government of Wales Act 2006;^(b)

“Work” means a work identified as part of the authorised development in Schedule 1 (Authorised development);

“Workforce Management Strategy” means the document certified as the Workforce Management Strategy by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order; and

^a 2003 c.21. The definition of “the electronic communications code” and section 106 were amended by sections 4(3) and (4) of the Digital Economy Act 2017 (c.30). There are other amendments to the Communications Act 2003 which are not relevant to this Order.

^b 2006 c.32

~~"the wWorks pPlans"~~ means the plan certified by the Secretary of State as ~~the wWorks pPlan~~ under article 76 (Certification of plans, etc.) ~~by the decision maker~~ for the purposes of this Order and identified in Part 2 of Schedule 2.

"Wylfa Newydd CoCP" means the document certified as the Wylfa Newydd Code of Construction Practice by the Secretary of State under article 76 (Certification of plans, etc.) for the purposes of this Order; and

"Wylfa Newydd CoOP" means the document certified as the Wylfa Newydd Code of Operational Practice by the Secretary of State under article 76 (Certification of plans, etc.) 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 air-space above its surface and references in this Order to the imposition of restrictions are references to restrictive covenants over land which interfere with the interests or rights of another and are for the benefit of land which is acquired, or rights over which are acquired, under this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a ~~wWork~~ comprised in the authorised ~~project development~~ and shown on the Works Plans or Rights of Way Plans ~~shall are to~~ be taken to be measured along that ~~work~~Work.

(4) All areas described in square metres in the Book of Reference are approximate.

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

(6) A reference in this Order to a Work designated by a number, or by a combination of letters and numbers (for example, "Work No. 9A"), is a reference to the Work so designated in Schedule 1 and reference to—

(a) Work No.1 includes Work No.s 1A-1O;

(b) Work No.2 includes Work No.s 2A-D;

(c) Work No.3 includes Work No.s 3A-B;

(d) Work No.9 includes Work No.s 9A-B; and

(e) Work No.10 includes Work No.s 10A-B.

~~— Unless the context requires otherwise, a reference in this Order to a numbered sheet (for example, "sheet no. 3") is a reference to the sheet so numbered in Schedule 2 of the Order (Approved plans).~~

(7) A reference in the Schedules to a "relevant site" is a reference to the site of that name shown in the Works Plan, Rights Of Way Plans and Land Plans.

(8) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the Rights of Way Plans.

(9) Grid references in the Schedules are references to points on the Ordnance Survey National Grid.

(10) In this Order, the expression "includes" is to be construed without limitation.

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

PART 2

PRINCIPAL POWERS

[Article 3 is based on General Model Provision 2 in Schedule 1 of the Model Provisions]

Development consent etc. granted by ~~the~~ Order

32.-- Subject to the provisions of this Order and ~~to the requirements in the~~ Schedule 3 (~~R~~Requirements) ~~attached to this Order~~ the undertaker is granted—

- ~~(a)~~—development consent for the authorised development; ~~and~~
- ~~(b)~~—~~consent for the ancillary works,~~

to be carried out within the Order ~~limits~~Limits.

[Article 4 is based on Railway Model Provision 6 in Schedule 2 of the Model Provisions]

Limits of ~~D~~deviation

4.—~~6~~(1) Subject to Schedule 3 (Requirements) articles 11 (Power to alter layout etc. of streets) and 12 (Street works), the undertaker must construct and maintain the authorised development within the Order Limits and—

- (a) ~~In carrying out~~ respect of any non-linear works, the undertaker may deviate laterally ~~from the lines or situations of the authorised development shown on the works plan~~ to the extent of the limits of deviation for that Work as shown on that plan; the Works Plan and vertically to any extent necessary;
- (b) In respect of any linear work, the undertaker may deviate laterally within the lines or situations shown on the Work Plans, so that the centre line of that work may be situated up to 2 metres either side of the centre line of that work shown on the Works Plans;
- (c) In respect of Work No.s 8, 9A, 10A and 11 (excluding the elevated viaduct and underpass), the undertaker may deviate vertically from the levels of the authorised development shown or noted on the sections— (i) to Detailed Design Drawings of any extent not exceeding [insert number]; linear work—
 - (ii) to a maximum of 0.5 metres upwards; ~~or~~ and
 - (ii) to any extent downwards as may be found ~~to be~~ necessary or convenient.
- (d) In respect of viaduct, overbridges and underpasses identified in Work No.s 9A, 9B, 10B and 11, deviate to any extent necessary.

(2) In this article, reference to -

- (a) a “linear work” is a reference to Work No.s 8, 9, 10 and 11; and
- (b) a “non-linear work” is a reference to Works No. 1, 2, 3, 4, 5, 6, 7, 12, 13, 14 and 15.

[Article 5 is not a Model Provision]

Effect of the Order on the site preparation and clearance permission

5.—(1) If the undertaker serves a notice on IACC that it intends to commence Work No.12—

(a) the undertaker must cease to carry out development under the site preparation permission; and

(b) the conditions of the site preparation permission will be unenforceable.

(2) The undertaker may not carry out Work No. 12 under this Order until notice has been served under paragraph (1).

(3) Notwithstanding paragraph (2), the undertaker may exercise any other powers under this Order in respect of any part of the authorised development prior to or following service of notice under paragraph (1).

(4) Without prejudice to the generality of paragraph (3), the undertaker may discharge any Requirement at any time prior to or following the service of notice under paragraph (1).

(5) Where details, documents, plans (except for the Detailed Design Drawings relating to the SPC Works) or any other matters have been approved or agreed by IACC pursuant to a condition of the site preparation permission in column (2) of Schedule 4 (deemed approval) prior to the date on which the undertaker serves notice under paragraph (1) the corresponding requirement to that condition in column (4) of Schedule 4 will be deemed to have been approved.

[Article 6 is based on General Model Provision 3 in Schedule 1 of the Model Provisions]

Maintenance of the authorised development project

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

[Article 7 is not a Model Provision]

Authorisation of use

7.— (1) The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit, licence or other obligation under any other legislation that may be required from time to time to authorise the operation of any part of the authorised development.

[Article 8 is based on General Model Provision 4 in Schedule 1 of the Model Provisions]

Benefit of Order

84.-- Subject to article 59 (eConsent to transfer benefit of Order), the provisions of ~~articles [] and []~~ *[specify relevant articles]* this Order shall have effect solely for the benefit of the undertaker *[specify person, body or class of person]* ~~].~~

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

[Article 9 is based on General Model Provision 5 in Schedule 1 of the Model Provisions]

Consent to transfer benefit of Order

95.-- (1) The undertaker may, with the consent of the Secretary of State *[specify person or body]* —

(a) transfer to another person and (the "transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

- (b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

except where paragraph (4) applies in which case no consent is required from the Secretary of State.

(2) Where an agreement has been made in accordance with paragraphs (1) and (4) references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraphs (1) and (4) ~~shall will~~ be subject to the same restrictions, liabilities and obligations (including development consent obligations within the meaning of section 106 of the 1990 Act (planning obligations)) as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The undertaker may make a transfer or grant under paragraph (1) without the consent of the Secretary of State where the transferee or lessee is the holder of a licence under section 3 of the Nuclear Installations Act 1965^a (grant and variation of nuclear site licences).

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

[Model Provision 6 has been included as part of articles 80 and 81 of the draft Order]

Application and modification of legislative provisions

~~6.--(1) Subject to the modifications set out in paragraph (2) the following provisions of the [insert short title of the relevant Act] shall be incorporated in this Order —~~

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

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

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

[Article 10 is based on General Model Provision 7 in Schedule 1 of the Model Provisions]

Defence to proceedings in respect of statutory nuisance

107.-- (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 (e), (fb), and (g) of section 79(1) of that Act (statutory nuisances and inspections therefor ~~noise emitted from premises so as to be prejudicial to health or a nuisance~~) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance —

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

~~(i) — relates to premises used by the undertaker for the purposes of or in connection with the construction, ~~or~~ maintenance or operation of the authorised development project and that the~~

^a 1965 c.57 Section 3 was amended by paragraph 18 of Part 2 of Schedule 12 of the Energy Act 2013 (c.32) and S.I. 2016/1154.

^a 1990 c. 43. Section 79(1)(fb) was inserted by section 102 of the Clean Neighbourhoods and Environment Act 2005 c.16. There are amendments to this Act which are not relevant to this Order.

nuisance is attributable to the carrying out and use of the authorised development project in accordance with:

(i) a notice served under section 60 of the Control of Pollution Act 1974 (control of noise on construction site)^a; ~~or~~

(ii) a consent given under section 61 of the Control of Pollution Act 1974 (prior consent for work on construction sites) ~~or 65 (noise exceeding registered level); of the Control of Pollution Act 1974^b~~; ~~or~~

(iii) the controls and measures relating to noise, vibration, dust or lighting as described in the Wylfa Newydd CoCP, Wylfa Newydd CoOP and relevant sub-CoCP or in accordance with noise and lighting levels set out in an environmental permit relating to the operation of the authorised development; or

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

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

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

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

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

(3) In this article “premises” has the same meaning as in section 79 of the Environmental Protection Act 1990.

PART 3

STREETS

^a 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

^b 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

[Article 11 is based on Model Provision 6 of the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (“TWA Model Provisions”)]

Power to alter layout, etc., of streets

11. (1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street, as specified in ~~columns (1) and~~ column (2) of Part 1 or Part 2 of Schedule 35 (Streets subject to ~~this Order~~ alteration of layout) and in the manner specified in relation to that street in column (3) ~~of that Schedule.~~

(1) ~~(2)~~ Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may, for the purposes of constructing, operating and maintaining ~~or using any~~ the authorised ~~street tramway~~ development, alter the layout of or carry out any works on any street ~~along which the tramway is laid and whether or not within the layout of any street having a junction with such a street;~~ Order Limits and, without ~~prejudice to~~ limiting the ~~generality~~ scope of ~~the foregoing~~ this paragraph, the undertaker may—

(a) alter the level or increase the width of any kerb, street, footpath, footway, cycle track or verge or central reservation; and

make and maintain passing place(s);

increase the width of the carriageway of the street by reducing the width of any kerb, ~~footway, cycle track or verge within the street;~~

b) ~~alter the level of any such kerb~~ footpath, footway, cycle track ~~or, verge,~~ or central reservation within the street;

(c) ~~reduce the width of the carriageway of the street forming a reserved area in the street as a stopping place for tramcars or by carrying out other works for that purpose;~~

(d) ~~carry out~~ execute any works to widen or alter the ~~carriageway~~ alignment of pavements;

execute any works of surfacing or re-surfacing of the ~~street~~ highway; and

execute any works necessary to alter existing facilities for the ~~purpose of deterring or preventing vehicles other than tramcars from passing along~~ management and protection of pedestrians.

(2) The undertaker must restore any street that has been temporarily altered under this article to the ~~tramway;~~ and reasonable satisfaction of the street authority.

(c) ~~make and maintain crossovers, sidings or passing places;~~

(3) ~~(3)~~ The powers ~~in~~ conferred by paragraph (2) ~~shall~~ must not be exercised without the consent of the street authority, ~~but such consent shall~~ which may not be unreasonably withheld, or delayed.

(4) If a street authority that receives an application for consent under paragraph (4) fails to notify the undertaker of its decision within 56 days beginning with the date on which the application was made, that authority will be deemed to have granted consent.

[Article 12 is based on General Model Provision 8 in Schedule 1 of the Model Provisions]

Street works

812.-- (1) The undertaker may, for the purposes of the authorised ~~development~~ project, enter on so much of any of the streets specified in column (2) of Schedule 6B (streets subject to street works) as is within the Order ~~Limits~~ for the relevant site specified in column (1) of Schedule 6 (Streets subject to street works) without the consent of the street authority and may—

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

(b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;

(c) place or keep an apparatus in the street;

(d) maintaining, renewing or altering apparatus in or on the street or change its position; ~~and~~

(e) demolish, remove, replace and relocate any bus shelter and associated bus stop infrastructure or other street furniture;

(f) execute any works to provide or improve sight lines;

(g) execute and maintain any works to provide hard and soft landscaping;

(h) carry out re-lining and placement of road markings;

(i) removal and installation of temporary and permanent signage; and

(j) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent must not be unreasonably withheld or delayed, the undertaker may, for the purposes of the authorised development, enter on so much of any other street whether or not within the Order Limits, for the purposes of carrying out the works set out at paragraph (1) above.

(3) If a street authority that receives an application for consent under paragraph (2) fails to notify the undertaker of its decision within 56 days beginning with the date on which the application was made, that authority will be deemed to have granted consent

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

~~(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).~~

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

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

[Article 13 is based on Railway Model Provision 3 in Schedule 2 of the Model Provisions]

Application of the 1991 Act

13—(1) Works executed Where the undertaker carries out works under this Order in relation to a highway which consists of or includes a carriageway ~~shall be treated for the purposes of Part 3 of the 1991 Act (street works) as major transport and the~~ works if—

13. (a) theycarried out are—

of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of ~~that~~the 1991 Act (which defines what highway authority works are major highway works); or

~~(b) they are~~ works which, had they been executed by the highway authority, ~~might~~could have been carried out in exercise of the powers conferred by section 64 of the ~~Highways Act-1980~~ Act (dual carriageways and roundabouts).

~~(2) the~~ works will be treated for the purposes of Part 3 of the 1991 Act (street works) as if they were major highway works carried out by the highway authority.

The provisions of ~~the 1991 Act mentioned in paragraph (3) which, together with other~~ sections 54 to 106 of the 1991 Act (save insofar as dis-applied through the operation of article 80 (Application, disapplication and modification of legislative provisions ~~of that Act~~), and Schedule 19 (Miscellaneous controls) apply in relation

to the ~~execution~~ carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions ~~shall~~ apply (with ~~the~~ all necessary modifications) in relation to ~~any~~ carrying out of works under article 13 (Power to alter layout, etc., of streets) and article 12 (Street works);

the permanent stopping up, of a street by the undertaker under article 14 (Permanent stopping up of streets and extinguishment of private means of access); and

the temporary stopping up, temporary alteration or temporary diversion of a street of a temporary nature by the undertaker under ~~the powers conferred by article 8 (temporary 16 (Temporary stopping up of streets))~~, whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

~~(3) The provisions of the 1991 Act referred to in paragraph (2) are — section 54 (advance notice of certain works), subject to paragraph (4);~~

~~section 55 (notice of starting date of works);~~

~~subject to paragraph (4);~~

~~section 57 (notice of emergency works);~~

~~section 59 (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 76 (liability for cost of temporary traffic regulation);~~

~~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.~~

~~(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) shall have effect as if references in section 57 of that Act to emergency works were included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.~~

~~(5) Nothing in article 10 (construction and maintenance of new or altered streets) shall —~~

~~(a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker shall not by reason of any duty under that article to maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or~~

~~(b) have effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply. In Part 3 of the 1991 Act, provisions relating to major highway works which refer to the highway authority concerned will, in relation to works which are major highway works by virtue of paragraph (1), be construed as references to the undertaker.~~

[Article 14 is based on General Model Provision 9 in Schedule 1 of the Model Provisions]

Permanent Stopping up of streets and extinguishment of rights

149.-- (1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development project, stop up each of the streets and extinguish each private means of access specified in columns ~~(1) and~~ (2) of Parts 1 and 2 of Schedule C7 (Streets to be permanently stopped up and private means of access to be extinguished) to the extent specified, by reference to the letters and numbers shown on the Rights Of Way works plan, in column (3) of ~~those that~~ Parts of that Schedule.

(2) No street or private means of access specified in columns ~~(1) and~~ (2) of Part 1 of Schedule C7 ~~(being a street to be stopped up for which a substitute is to be provided)~~ shall be wholly or partly stopped up under this article unless —

- (a) the new street or private means of access to be substituted for it, which is specified in column (4) of that Part of that Schedule is open for use, and in the case of a street, 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 street or private means of access to be stopped up between the commencement and termination points for the stopping up of the street or extinguishment of private means of access is first provided, in the case of a street, and is subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, ~~between the commencement and termination points for the stopping up of the street~~ until the completion and opening of the new street in accordance with ~~sub-~~paragraph (2)(a).

(3) Where the undertaker provides a substitution under paragraph (2), the new or temporary alternative street or private means of access is not required to be of a higher standard than the stopped up street or extinguished private means of access in column (2) of Part 1 of Schedule 7.

~~(34)~~ No street or private means of access specified in column (2) of Part 2 of Schedule ~~C-7~~ ~~(being a street to be stopped up for which no substitute is to be provided)~~ shall be wholly or partly stopped up under this article unless the condition specified in paragraph ~~(45)~~ is satisfied in relation to all the land which abuts on either side of the street to be stopped up or private means of access to be extinguished.

~~(45)~~ The conditions referred to in paragraph ~~(34)~~ ~~is~~are that—

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

~~(65)~~ Where a street has been stopped up or private means of access extinguished under this article—

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

~~(76)~~ Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (descriptions of development).

~~(87)~~ This article is subject to article ~~32-38~~ ~~(apparatus-Apparatus and rights of statutory undertakers in stopped-up streets~~etc. of statutory undertakers).

(9) For the purposes of this article and Schedule 7, the definition of "street" under article 2 (Interpretation) is extended to also include any other public right of way.

[Article 15 is not a Model Provision]

Status of footpaths created or improved

—15. (1) With effect from the date on which the highway authority has approved that the footpaths specified in column (2) of Schedule 8 (status of footpaths created or improved) have been created or improved to the standard specified in a footpath implementation plan, the footpaths in question shall be deemed to have the status specified in column (3) of that Schedule.

(2) For the purposes of this article and Schedule 8, the definition of "footpaths" under article 2 (Interpretation) is extended to also include combined footpath/cycleways, footways and cycleways.

Public rights of way

~~10.--(1) With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the public right of way (being a [insert one of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.~~

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

~~(3) In this article—~~

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

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

[Article 16 is based on General Model Provision 11 in Schedule 1 of the Model Provisions]

Temporary stopping up of streets

1611.-- (1) The undertaker, during and for the purposes of carrying out the authorised development project, may temporarily stop up, alter or divert any street shown on the Rights of Way Plans and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph ~~(2)~~, prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use as a temporary working site any street which has been temporarily stopped up, altered or diverted under the powers conferred by this article.

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

~~(3)~~ Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns ~~(1) and~~ (2) of Schedule ~~D9~~ (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the Rights Of Way works plan Plans, in column (3) of that Schedule, and may provide a temporary diversion.

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

- (a) any street specified as mentioned in paragraph ~~(3)~~ without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld or delayed.

(6) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily stopped up street or extinguished private means of access in columns (2) of Schedule 9.

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

(8) If a street authority that receives an application for consent under paragraph (5)(b) fails to notify the undertaker of its decision within 28 days of receiving the application, that street authority will be deemed to have granted consent.

(9) For the purposes of this article and Schedule 9, the definition of "street" under article 2 (Interpretation) is extended to also include any other public right of way.

[Article 17 is not a Model Provision]

Use of private roads for construction

17.— (1) The undertaker 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 undertaker 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 of the 1961 Act

[Article 18 is based on General Model Provision 12 in Schedule 1 of the Model Provisions]

Access to works

~~1812.—~~ (1) The undertaker may, for the purposes of the authorised ~~development project~~

~~(a) — form and lay out means of access, or improve existing means of access; in the location specified in columns (1) and (2) of Schedule E (access to works); and~~

~~(b) — with the ~~agreement approval~~ of the relevant planning authority after consultation with the highway authority, (such agreement not to be unreasonably withheld), form and lay out such other means of access or improve existing means of access; at such locations within the Order ~~l~~limits as the undertaker reasonably requires for the purposes of the authorised project.~~

(2) If a planning authority that receives an application for approval under paragraph (1) fails to notify the undertaker of its decision within 28 days of receiving the application, that street authority will be deemed to have granted approval.

[Article 19 is based on Model Provision 10 of the TWA Model Provisions]

10.— Construction and maintenance of new ~~or~~ and altered streets

~~19.—~~ (1) Any street (other than ~~specified private streets~~) public highway) to be constructed under this Order ~~shall~~ must be completed to the reasonable satisfaction of the ~~highway~~ street authority and ~~shall be maintained by and at the expense of, unless otherwise agreed between~~ the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

~~(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.~~

~~(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of the undertaker.~~

(2) (4) Where a street is altered under this Order, the altered part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Where land not previously part of the public highway comes to form part of the public highway by virtue of construction, diversion or alteration of a street under this Order, unless otherwise agreed with the local highway authority, the land is deemed to have been dedicated as public highway immediately upon completion of the highway that has been constructed, altered or diverted.

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

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

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

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

[Article 20 is based on General Model Provision 13 in Schedule 1 of the Model Provisions]

Agreements with street authorities

2013.-- (1) A street authority and the undertaker may enter into agreements with respect to:—

- (a) the construction of any new street ~~including any structure carrying the street over or under a {insert description of development}~~ authorised by this Order;
- (b) any stopping up, alteration or diversion of a street authorised by this Order; or
- (~~c~~b) the maintenance of the structure of any bridge or tunnel carrying a street over or under ~~a {insert description of development}~~ any part of the authorised development ;
- ~~(c) any stopping up, alteration or diversion of a street authorised by this Order; or~~
- (d) the carrying out in the street of any of the works referred to in articles 11 (Power to alter layout, etc., of streets) or 8(1)12 (Street works);: ~~and~~
- (e) such works as the parties may agree.

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) ~~include an agreement between the undertaker and street authority~~ specifying a reasonable time for the completion of the works; ~~and~~
- (c) ~~make provision for the maintenance of the structure of any viaduct, underpass, overpass or bridge carrying a street; and.~~
- (~~d~~e) contain such terms as to payment and otherwise as the parties consider appropriate.

[Article 21 is based on Model Provision 10 of the TWA Model Provisions]

Traffic regulation measures

41.—(1) Subject to the provisions of this article, the undertaker may at any time, for the purposes of the authorised ~~tramway, at any time prior to the expiry of 12 months from the opening of the authorised tramway for use, and with the consent of the traffic authority in whose area the road is situated, which consent shall not be unreasonably withheld~~ development —

(a) ~~prohibit or restrict the waiting or loading or unloading of vehicles in the manner specified in Part 1 of Schedule 11 to this Order on those roads~~ make provision, in respect of those streets specified in column (2) and along the lengths and between the points of Part 1 of Schedule 10 (traffic regulation measures), as to the speed limit of those streets as specified in column (3) of that Part of that Schedule; and

(b) ~~authorise the use as a parking place in the manner specified in Part 2 of Schedule 11 to this Order of those roads~~ make provision, in respect of those streets specified in column (2) and along the lengths and between the points of Part 1 of Schedule 10, as to the clearway status of, and the application of other prohibitions to, those streets as specified in column (3) of that Part of that Schedule;

(c) ~~make provision as to the direction of vehicular traffic in the manner specified in Part 3 of Schedule 11 to this Order on the roads specified in column (2) and as respects direction to the extent specified in column (3) of that Part of that Schedule;~~

(d) ~~prohibit vehicular access in the manner specified in Part 4 of Schedule 11 to this Order on those roads specified in column (3) of that Part of that Schedule;~~

(e)

(5) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the traffic authority in whose area the street is situated, which consent may be subject to reasonable conditions, the undertaker may, for the purposes or in connection with the authorised development —

(a) revoke, amend or suspend in whole or in part any traffic regulation 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 undertaker under this paragraph;

(b) permit, prohibit or restrict the stopping, parking, 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; and

(f) make provision, in respect of those streets as specified in column (2) of that Part 2 of that Schedule 10, as to the speed limit of those streets as specified in column (3) of that part of that Schedule.

(3) Before complying with the provisions of paragraph (4) the undertaker shall must consult the chief officer of police and the traffic authority in whose area the roadstreet is situated before complying with the provisions of paragraph (3).

(4) The undertaker ~~shall~~ must not exercise the powers ~~conferred by this article in paragraphs (1) and (2)~~ unless it has—

(a) given not less than ~~12 weeks~~ 28 days notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the ~~road~~ street is situated; and

(b) advertised its intention in such manner as the traffic authority may, specify in writing within 287 days of its receipt of notice of the undertaker's intention, specify in writing, as provided for in sub-paragraph (a).

(5) Any prohibition, restriction or other provision made by the undertaker under ~~sub-paragraph (1)(a), (c), (d), or (e) shall have~~ and (2) has effect as if duly made by —

(a) the traffic authority in whose area the ~~road~~street is situated as a traffic regulation order under the 1984 Act; or

(b) the local authority in whose area the street is situated as an order under section 32 of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in ~~Schedule 11~~Schedule 10) to which the prohibition, restriction or other provision is subject; ~~and~~.

~~(5) Any authorisation of a parking place made by the undertaker under sub-paragraph (1)(b) shall have effect as if duly made by the local authority as an order under section 32 of the 1984 Act.~~

~~(6) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement).~~

~~(2)~~(6) Expressions used in this article and in the 1984 Act ~~shall~~ have the ~~same~~same^a meaning in this article as in that Act.

(7) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

PART 4

SUPPLEMENTAL POWERS

[Article 22 is based on General Model Provision 14 in Schedule 1 of the Model Provisions]

Discharge of water

~~1422.~~-- (1) Subject to paragraphs (2) and (3), the~~The~~ undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, operation or maintenance of the authorised ~~project~~development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order ~~limits~~Limits, make openings into, and connections with, the watercourse, public sewer or drain.

~~(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991⁹ (right to communicate with public sewers).~~

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

~~(4)~~ The undertaker ~~shall~~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 ~~shall~~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)~~ Where the person to whom the sewer or drain belongs receives an application for consent under paragraphs (2) or approval under paragraph (3)(a) and fails to notify the undertaker of its decision within 28

^a 2004 c.18. Schedule 7 was amended by S.I. 2013/362. There are other amendments made to the Traffic Management Act 2004 which are not relevant to this Order.

⁹ 1991 c. 56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

days of receiving an application, that person will be deemed to have granted consent or given approval, as the case may be.

(5) The undertaker ~~shall~~must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river, subject to the Works that are authorised under this Order.

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

(7) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) will be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).~~This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991 (offences of polluting water).~~

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to ~~the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964.~~⁺

~~(interpretation)~~NRW, an internal drainage board, ~~a joint planning board, a local authority, a National Park Authority, or a sewerage undertaker or an urban development corporation;~~ and

(b) except as provided in article 2 (Interpretation), other expressions, ~~excluding watercourse,~~ used both in this article and in the Water Resources Act 1991^b have the same meaning as in that Act.

(9) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016.^c

[Article 23 is based on General Model Provision 15 in Schedule 1 of the Model Provisions]

Protective work to buildings

~~1523.~~-- (1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order Limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

^a 1991 c.56. Section 106 was amended by sections 35(8) and 43(2) of and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the Water Act 2003 (c.37). Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c.37) and paragraph 90 of Schedule 7 to the Water Act 2014 (c.21). Section 104 was amended by section 96(4) of and paragraph 1 of Part 3 of Schedule 9 to the Water Act 2003 (c.37), and section 42(3) of the Flood and Water Management Act 2010 (c.29).

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

^b 1991 c.57.

^c S.I. 2016/1154.

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised ~~project~~development; or
- (b) after the completion of that part of the authorised ~~development~~project in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised ~~development~~project becomes operational.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on and remove from the building any apparatus and equipment for use in connection with the survey.

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

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter ~~and survey any~~ a building and any land within its curtilage and place on, leave or remove any apparatus or equipment;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker ~~shall~~will, 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 (ed), the notice must specify ~~specifying~~ the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article ~~42-78~~ (~~arbitration~~Arbitration).

(7) The undertaker ~~shall~~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~~project carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised ~~development~~project,

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

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

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

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

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

[Article 24 is based on General Model Provision 16 in Schedule 1 of the Model Provisions]

Authority to survey and investigate the land

~~1624.~~ (1) The undertaker may for the purposes of this Order enter on any land shown within the Order ~~limits~~ Limits or which may be affected by the authorised development~~project~~ and—

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

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

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

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

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

- (a) in land located within the highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority,
- but such consent ~~shall~~ must not be unreasonably withheld or delayed.

(5) The undertaker ~~shall~~ must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be

determined, in case of dispute, Part 1 [of the 1961 Act](#) (determination of questions of disputed compensation) ~~of the 1961 Act.~~

~~(6) If either a [highway authority](#) or a [street authority](#) which has received an application for consent under paragraph (4) fails to notify the undertaker of its decision within 28 days of receiving the application, that authority is deemed to have granted the consent.~~

[Model Provision 17 has been incorporated into article 72 (Removal of human remains)]

~~Removal of human remains~~

~~17.—(1) In this article "*the specified land*" means *[insert description of the land]*.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(9) If—~~

- ~~(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or~~
- ~~(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or~~
- ~~(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or~~
- ~~(d) it is determined that the remains to which any such notice relates cannot be identified;~~

~~subject to paragraph (10) the undertaker shall remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves shall be re-interred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.~~

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

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

- ~~(a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and~~
- ~~(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to *[insert relevant local authority]* mentioned in paragraph (4).~~

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

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

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

PART 5

POWERS OF ACQUISITION

[Model Provision 18 has been merged with article 29 (Private rights)]

Compulsory acquisition of land

1825.-- (1) The undertaker may acquire compulsorily so much of the Order land [described in the Book of Reference and shown on the Land Plans](#) as is required for [the construction, operation and maintenance of](#)

*—1857 c. 81. There are amendments to this Act which are not relevant to this Order.

the authorised ~~project development~~ for to facilitate it, ~~or or as~~ is incidental, to it ~~for is required as replacement land~~.

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

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

~~(4) This article is subject to article 25 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and article 28 (temporary use of land for carrying out the authorised project).~~

(2) This article is subject to—

(a) article 27 (Compulsory acquisition of rights);

(b) article 28 (Time limit for exercise of authority to acquire land compulsorily);

(c) article 32 (Acquisition of land limited to subsoil lying more than 9 metres beneath the surface);

(d) article 35 (Temporary use of land for carrying out authorised development); and

(e) article 82 (Crown rights).

[Article 26 is based on General Model Provision 19 in Schedule 1 of the Model Provisions]

Compulsory acquisition of land — incorporation of the mineral code

~~1926.~~ (1) ~~{Part(s)}-2 {and 3}~~ of Schedule 2 to the Acquisition of Land Act 1981^a (minerals) ~~{is/are}~~ incorporated in this Order subject to the modifications that—

(a) paragraph 8(3) is not incorporated;

(b) for "the acquiring authority" substitute "the undertaker"; and

(c) (e) ~~[insert additional modifications]~~ for "undertaking" substitute "authorised development".

Time limit for exercise of authority to acquire land compulsorily

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

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

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

^a 1981 c. 67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule 2 was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.

^b ~~1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.~~

(2) The authority conferred by article ~~28~~ 35 (~~temporary~~ Temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

[Model Provision 21 has been merged with article 29 (Private rights)]

Compulsory acquisition of rights

~~21~~27-- (1) The undertaker may acquire compulsorily the existing rights, ~~and~~ create and acquire compulsorily the new rights and impose such restrictive covenants described in the book of reference and shown on the Land Plans in, under or over the Order Land as may be required for any purpose for which that land may be acquired under article 25 (Compulsory acquisition of land). ~~insert name~~ plan.

~~(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right. In the case of the Order Land specified in column (1) of Schedule 11 (Land in which rights, etc. may be acquired), the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of such restrictive covenants as may be required for the purpose specified in relation to that land in column (3) of that Schedule.~~

~~(3) Subject to section 8 of the 1965 Act, as substituted by article 26 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land. Schedule 12 (Modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation and acquisition of a new right or the imposition of a restrictive covenant.~~

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

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

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

Time limit for exercise of authority to acquire land compulsorily

~~20~~28-- (1) After the end of the period of ~~{5 years}~~ beginning on the day on which this Order is made—

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

- (b) ~~no declaration shall may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 Act as applied by article 230 (application Application of the Compulsory Purchase (Vesting Declarations) 1981) Act 1981)~~⁴⁴

in relation to any part of the Order Land.

(2) The authority conferred by article 28-35 (temporary-Temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

[Article 29 is based on General Model Provision 22 in Schedule 1 of the Model Provisions]

Private rights ~~of way~~

~~2229.~~-- (1) Subject to the provisions of this article, all private rights and restrictive covenants of way over land subject to compulsory acquisition of land or rights or the imposition of restrictions under this Order ~~shall be are~~ extinguished or discharged—

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants of way over land owned by the undertaker which, being within the ~~limits of land which may be acquired shown on the land plan~~ Order Limits, ~~is are~~ required for the purposes of this Order ~~shall be are~~ extinguished or discharged on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the provisions of this article, all private rights or restrictive covenants of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right that is a “relevant right” within the meaning of of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article ~~31-37~~ (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to:—

- (a) any notice given by the undertaker before:—
- (i) the completion of the acquisition of the land or right or the imposition of the restrictive covenant over or affecting the land,
- (ii) the undertaker's appropriation of it,

⁴⁴ 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

- (iii) the undertaker's entry onto it, or
- (iv) the undertaker's taking temporary possession of it,

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

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

(7) ~~If any such~~ Where an agreement as is referred to in paragraph (6)(b):—

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

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

~~(8)~~ Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, 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 having that effect.

~~(9)~~ This article is subject to article 14 (Permanent stopping up of streets and ~~private means of access~~ extinguishment of rights).

[Article 30 is based on General Model Provision 23 in Schedule 1 of the Model Provisions]

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

~~2330.~~ (1) The 1981 Act applies ~~The Compulsory Purchase (Vesting Declarations) Act 1981¹⁵ shall apply~~ as if this Order were a compulsory purchase order.

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

~~(3)~~ (3) In section 1 (application of act) for subsection (2) there is substituted—

“(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”.

In section 3 (preliminary notices), for subsection (1) there shall be substituted—

¹⁵—1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

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

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

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

~~(4) In that section, in subsection (2), for "(1)(b)" there shall be substituted "(1)" and after "given" there shall be inserted "and published". Omit section 5A (time limit for general vesting declaration).~~

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

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

(b) For “the three year period mentioned in section 4” substitute “the five year period mentioned in article 28 of the Wylfa Newydd (Nuclear Generating Station) Order 201[*]”.

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

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

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

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

~~(6) In section 5-6 (notices after execution of declaration) for subsection (1)(b) there is substituted —(earliest date for execution of declaration)—~~

“(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”

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

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

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

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

~~(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall~~ are to be construed as references to the 1965 Act that Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order .

[Article 31 is based on General Model Provision 24 in Schedule 1 of the Model Provisions]

Acquisition of subsoil only

~~2431~~.-- (1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article ~~18-25~~ (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) shall not prevent article ~~26-33~~ (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

[Article 32 is based on General Model Provision 25 in Schedule 1 of the Model Provisions]

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

~~2532~~.-- (1) This article applies to the land specified in Schedule ~~F-13~~ (land of which only subsoil more than 9 metres beneath the surface may be acquired).

(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article ~~18-25~~ (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.

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

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

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;
- (b) in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or
- (c) in any other case, ground surface level.

[Article 33 is based on General Model Provision 26 in Schedule 1 of the Model Provisions]

Acquisition of part of certain properties

~~2633~~.-- (1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where ~~—~~:

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

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

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

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

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

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

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

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

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

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

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

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

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

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

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

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

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

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

[Article 34 is based on General Model Provision 27 in Schedule 1 of the Model Provisions]

Rights under or over streets

~~2734.~~2734.-- (1) The undertaker may enter on ~~an~~and use appropriate and use so much of the subsoil of, or air-space over, any street within the Order limits as may be required for ~~the purposes of the authorised project and may use the subsoil or air space for~~ those purposes or any other purpose ancillary to the authorised projectdevelopment.

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

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

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

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

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

[Article 35 is based on General Model Provision 28 in Schedule 1 of the Model Provisions]

Temporary use of land for carrying out the authorised project

~~2835.~~2835.-- (1) The undertaker may, in connection with the carrying out of the authorised projectdevelopment—

- (a) enter on and take temporary possession of
 - (i) ~~the land specified in columns (1) and (2) of Schedule G-14 (Land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule; and~~
 - (ii) any of the Order Land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) other than in connection with the acquisition of rights only and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

- (b) remove any electric line, electrical plant, structures, apparatus, -buildings and vegetation from that land; and
- (c) construct temporary or permanent works comprised within the authorised development (including the provision of means of access) and buildings on that land; and-
- (d) construct any works specified in relation to that land in column (3) of Schedule 14, or any other mitigation works.

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

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

- (a) in the case of land specified in paragraph 1(a)(i) above, 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 (2) of Schedule 14 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 27 (Compulsory acquisition of rights); or
- (b) in the case of land referred to in paragraph 1(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker 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.

~~of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule G.~~

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must either acquire the land under paragraph 1(a) or, unless otherwise agreed with the owners of the land, ~~shall~~ remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker shall-is not be 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) restore the land to a condition better than the relevant land was in before temporary possession;
- (d) remove any ground strengthening works which have been placed on the land to facilitate construction and operation of the authorised development;
- (e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (f) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

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~~(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.~~

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

~~(7) Nothing in this article shall affect any liability to pay compensation under section 10(2)152 of the 1965 2008 Act (compensation in case where no right to claim in nuisance further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying~~

out of the authorised ~~project~~development, other than loss or damage for which compensation is payable under articles 27(6), paragraph (5).

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

- (a) acquiring existing and new rights or imposing any restrictive covenants over any part of that land under article ~~24-27~~ (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article ~~24-31~~ (~~acquisition~~Acquisition of subsoil only) or in accordance with article ~~25-32~~ (~~acquisition~~Acquisition of land limited to subsoil lying more than 9 metres beneath surface); ~~or~~
- (c) carrying out a survey of that land under article—24 (Authority to survey and investigate the land).

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

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

(9) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

(10) Nothing in this article removes the need for a marine licence under Part 4 of the 2009 Act.

[Article 36 is based on General Model Provision 29 in Schedule 1 of the Model Provisions]

Temporary use of land for maintaining authorised ~~project~~development

~~29~~36.-- (1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order ~~limits~~Limits if such possession is reasonably required for the purpose of maintaining the authorised ~~project~~development; and
- (b) construct such temporary works (including the provision of means of access) and structures and buildings on the land as may be reasonably necessary for that purpose; or
- (c) ~~enter onto any land within the Order Limits for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised development.~~

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

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

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

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of –

(a) the authorised development or any of its parts;

(b) the public; and/or

(c) the surrounding environment.

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

~~(45)~~ The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

~~(56)~~ Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~ must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

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

~~(87)~~ Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised ~~project~~ development, other than loss or damage for which compensation is payable under ~~paragraph~~ article 27 (6) of this Order.

~~(98)~~ Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

~~(109)~~ Section 13 of the 1965 Act (refusal to give possession to acquiring authority) ~~shall apply~~ applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(10) Nothing in this article removes the need for a marine licence under Part 4 of the 2009 Act.

~~(11) In this article "the maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project is first opened for use.~~

[Model Provison 30 not used]

~~Special category land~~

~~30.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and *[insert name of relevant body]* has certified that a scheme for the provision of the replacement land as *[common/open space/fuel or field garden allotment]* has been implemented to its satisfaction.~~

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

~~(3) In this article—~~

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

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

[Article 37 is based on General Model Provision 31 in Schedule 1 of the Model Provisions]

Statutory undertakers

~~3137~~—(1) Subject to the provisions of Schedule 15 (~~p~~Protective provisions), ~~the~~the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers ~~shown on the land plan within the Order Limits of the land to be acquired~~ and described in the ~~book~~Book of ~~reference~~Reference;
- (b) acquire existing rights, create and acquire new rights and impose restrictive covenants over the land belonging to statutory undertakers within the Order Limits and described in the Book of Reference;
- (~~b~~c) extinguish or suspend the rights of, remove, alter, renew, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order Limits ~~shown on the [insert name] plan and described in the book of reference;~~ and
- (d) 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.
- (e) ~~acquire compulsorily the new rights over land belonging to statutory undertakers shown on the [insert name] plan and described in the book of reference.~~

(2) Subject to the provisions of Schedule 15, the undertaker may for the purposes of article 12 (Street works) remove or reposition apparatus belonging to statutory undertakers which is laid beneath any of the streets specified in Schedule 6 (Streets subject to street works).

[Article 38 is based on General Model Provision 32 in Schedule 1 of the Model Provisions]

Apparatus and rights of statutory undertakers in stopped-up streets

~~3238~~—(1) Where a street is stopped up under article ~~9~~14 (Permanent stopping up of streets and public rights of way and extinguishment of rights~~stopping up of streets~~), any statutory ~~utility~~undertaker whose apparatus is under, in, on, along or across the street or public right of way has~~shall have~~ 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 9~~14~~, any statutory ~~undertaker~~utility whose apparatus is under, in, on, over, along or across the street or public right of way may, and if reasonably requested to do so by the undertaker ~~shall~~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 undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with:—

- (a) the execution of the relocation works required in consequence of the stopping up of the street or public right of way; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) ~~shall~~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) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—~~;~~

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs ~~shall~~are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—~~;~~

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

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

- (b) "statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003([interpretation](#))^a

[Article 39 is based on General Model Provision 33 in Schedule 1 of the Model Provisions]

Recovery of costs of new connections

~~33~~39-- (1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article ~~31-37~~ (~~statutory~~ [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 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) ~~shall~~ does not apply in the case of the removal of a public sewer but where such a sewer is removed under article ~~31~~37, 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,

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

(3) This article shall not have effect in relation to apparatus to which article ~~32-38~~ (~~apparatus~~ [Apparatus](#) and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

(4) In this ~~paragraph~~ article, —

(a) "public communications provider" has the meaning as in section 151(1) of the Communications Act 2003; and

(b) "public utility undertaker" has the same meaning as in the 1980 Act.

[Article 40 is identical Model Provision 44 of the TWA Model Provisions]

No double recovery

40. Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

[Article 41 is not a Model Provision]

Protective provisions

[41](#). [Schedule 15 \(Protective provisions\) to this Order has effect.](#)

^a 2003 c. 21. There are no amendments to this Act which are ~~not~~ relevant to this Order.

[Article 42 is not a Model Provision]

Rights over land

42.—(1) The undertaker may enter into and use so much of the airspace over any land within the Order Limits as may be required for the construction and maintenance of the authorised development and may use the airspace for those purposes or any other purposes ancillary to the authorised development.

(2) The undertaker may exercise any power conferred by paragraph (1) in relation to land without being required to acquire any part of the land or any easement or right in the land.

(3) Subject to paragraph (4), any person who is an owner or occupier of land used under paragraph 44(1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

[Model Provision 34 is not used.]

Railway and navigation undertakings

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

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

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

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

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

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

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

PART 7

MARINE WORKS

[Article 43 is based on Harbour Model Provision 2 in Schedule 3 of the Model Provisions]

Incorporation of the ~~Harbours, Docks and Piers Clauses Act 1847~~ Act

~~43.2.—(1)~~ With the exception of sections ~~63A to 23, 25, 31, the proviso to section 32, sections 42, 45, 48, 34, 36, 40 to 50, 59, 60 to 63, 66 to 69, 73, 67, 71-72, 77 and 79 to 90, 92, 97 and to 82, 85, 89, 91 to 99, 101, 102, and 104~~ the 1847 Act is incorporated in this Order subject to the modifications stated in paragraphs (2) and (~~3~~7).

(2) ~~(2)~~ Section 35 of the 1847 Act (masters to report arrival of vessel. Penalty for neglect) must have effect as if the words “liable to rates” were removed.

(3) Section 37 of the 1847 Act (masters of vessels to give accounts of goods intended to be unshipped within the limits, &c) must have effect as if for the words “collector of rates” were substituted the words “harbour master”.

(4) Section 39 of the 1847 Act (shippers to give an account of goods intended to be shipped) must have effect as if for the words “collector of rates” were substituted the words “harbour master”.

(5) Section 69 of the 1847 Act (combustible matter on quays, &c., to be removed) must have effect as if for the words from “must forfeit” to the end of the section there were substituted the words “must be liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

~~(6)~~(6) In construing the 1847 Act as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the ~~[insert relevant body].~~ undertaker;
- (c) the expression “the harbour, dock or pier” means the ~~authorised project within the area of jurisdiction;~~ harbour;
- (d) the expressions “limits” and “prescribed limits” mean the ~~area of jurisdiction;~~ harbour limits;
- (e) the expression “near the pier” does not extend beyond the ~~area of jurisdiction;~~ harbour limits;
- (f) the expression “the harbour master”, means, in relation to the ~~authorised project,~~ means the [insert relevant body].; harbour, the harbour authority; and
- (g) the definition of “vessel” in article ~~1(1) shall be~~ 2 (Interpretation) is substituted for the definition in section 3 of the 1847 Act; (interpretation)
- ~~h) section 53 of the 1847 Act shall not be construed as requiring the harbourmaster to serve written notice on the master of a vessel and directions given under that section may be communicated to the master of a vessel orally or otherwise; and~~
- ~~(i) any requirement to comply with a notice or direction given by the harbour master shall be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction shall also comply with any relevant notice or direction given by the [insert relevant authority] or the harbour master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).~~

(7) All fines and forfeitures recoverable under the provisions of the 1847 Act as incorporated within this Order may be recovered summarily.

[Article 44 is not a Model Provision]

Further powers as to works and extinguishment of rights

44.—(1) The undertaker may, in connection with the construction of the Marine works—

- (a) enclose or reclaim from the foreshore and bed of the sea; and
- (b) hold and use as part of the Marine Works,

so much of the foreshore and bed of the sea as is situated within the limits of deviation and is required for, or in connection with, the construction of those works.

~~(2)~~(3) As soon as the undertaker exercises the powers under paragraph (1), any right of navigation or other public rights over the part of the sea and the foreshore in respect of which it exercises those powers will be extinguished.

[Article 45 is not a Model Provision]

Harbour authority

45. —(1)The undertaker must be the harbour authority in respect of the harbour.

(2) Without prejudice to any provision of the 1847 Act as incorporated in this Order by article 43 (Incorporation of the 1847 Act), the area within which the harbour authority may exercise its functions under this Order must be the harbour.

[Article 46 is not a Model Provision]

Agreements entered into by the undertaker

46. Any agreement or undertaking entered into by the undertaker before the coming into force of this Order in connection with the proposed exercise of its function as harbour authority must be binding upon the harbour authority notwithstanding that it was entered into by the undertaker before it was established as a harbour authority by article 45 (Harbour Authority).

[Article 47 is not a Model Provision]

Application of Pilotage Act 1987

47. The undertaker must be a competent harbour authority in respect of the harbour for the purposes of the Pilotage Act 1987.^a

[Article 48 is based on Harbour Model Provision 5 in Schedule 3 of the Model Provisions]

Limits of harbour

~~48.5~~ (1) The limits of the harbour within which the undertaker ~~shall~~ is permitted to exercise jurisdiction ~~shall be the area as the harbour authority and within which the powers of the harbour master are exercisable are the seaward and the landward areas described in Schedule K to this Order and 16 (Limits of harbour) the seaward area of which is shown, for the purpose of identification only, [...]; and in the following provisions of this Order, referenced by a red line referred to the limits of the harbour shall be construed as references to the limits so described.~~ as the Statutory Authority Area on WN0902-HZDCO-MRN-DRG-00034 in Schedule 2 (Approved plans) of this Order.

~~(2) Any references to the limits of the harbour contained in the [insert name of Acts] Acts and Orders or in any byelaws, orders or regulations made under those Acts or Orders, shall be construed as references to the limits described in Schedule L to this Order.~~

~~(2) [any necessary revocations].~~ In the event that there is any discrepancy between the description of the seaward area in Schedule 16 and the area shown on WN0902-HZDCO-MRN-DRG-00034, the description prevails.

[Article 49 is based on Harbour Model Provision 6 in Schedule 3 of the Model Provisions]

Maintenance of ~~authorised project~~ Marine Works

~~49.6.~~ The undertaker may at any time maintain the ~~authorised project and within the limits of the harbour, Marine Works and~~ from time to time alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently ~~the authorised development~~ a work comprising the Marine Works within the parameters provided for that work in Schedule 3 (Requirements) and may maintain and operate that work as altered, enlarged, replaced, relayed, extended or reconstructed, except to the extent that this Order ~~or an agreement made under this Order,~~ provides otherwise.

^a 1987 c.21.

[Article 50 is based on Harbour Model Provision 7 in Schedule 3 of the Model Provisions]

Subsidiary works

~~50.7~~—(1) Subject to paragraph (3), the undertaker may from time to time within the ~~Order limits~~ parameters for the Marine Works in Schedule 3 (Requirements) provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction or maintenance of ~~the work~~ or the operation of the ~~undertaking~~ harbour, and for this purpose the undertaker may construct ~~and~~ maintain and operate roads, 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 (including levelling, raising and lowering of surfaces) as may be necessary or expedient.

(2) ~~Without prejudice~~ Subject to paragraph (13), the undertaker may, within the ~~Order limits~~ parameters for the Marine Works in Schedule 3, carry out ~~and~~ maintain and operate 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 ~~work~~ Marine Works including—

- (a) works for the accommodation or convenience of vessels (including dolphins, mooring posts, buoys and pontoons); or for the loading and unloading of goods and the embarking and landing of personnel; and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

~~(3) (3) Article 3 of, and Parts [specify any required provisions in respect of permitted development right] 11 and 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(a) shall apply as if this Order were a grant of planning permission.~~

(3) Electrical works, mechanical works or equipment constructed, maintained or used pursuant to the powers conferred by this article, must be so constructed, maintained or used, that any electricity generated, conveyed or used by, in or in connection with them does not cause interference (whether by induction or otherwise) with any telecommunications apparatus or with telecommunication by means of such apparatus.

[Article 51 is not a Model Provision]

Obstruction of work

~~51.~~—(1) Any person who—

- (a) intentionally obstructs any person acting under the authority of the undertaker in setting out the lines of, or in constructing, the Marine Works or authorised development; or
- (b) without reasonable excuse interferes with, moves or removes any pole, stake, station point, bench mark or equipment used in the construction, maintenance or use of the Marine Works or authorised development.

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

[Article 52 is not a Model Provision]

Obstruction of officers

~~52.~~—(1) Any person who—

- (a) intentionally obstructs an officer of the harbour authority or other person acting in pursuance of this Order or of any enactment relating to the harbour limits;
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer;
or

(c) without reasonable excuse fails to give such an officer any information or produce any document which he may require for the purpose of performance of his functions,

must be liable on summary conviction of a fine not exceeding level 3 on the standard scale.

(2) Any person who, in giving such information as is mentioned in sub-paragraph (c) of paragraph (1), makes a statement which he knows to be false, must be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) Nothing in paragraph (1) applies to the harbour master or to any person acting under the authority of the harbour master.

[Article 53 is based on Harbour Model Provision 20 in Schedule 3 of the Model Provisions]

Power to dredge

53.20—(1) The undertaker may, for the purposes of constructing ~~and~~, maintaining and operating the ~~work~~Marine Works and of affording access to the ~~work~~Marine Works by vessels, from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels ~~of the river as adjoin or are near to the work~~as lie within the harbour limits and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995 (salvage and wreck))^(a) from time to time dredged by them.

(2) (No such materials ~~shall~~must be laid down or deposited—

(a) in contravention of the provisions of any enactment as respects the disposal of waste; or

(b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by ~~[insert relevant body]~~ NRW.

~~(3) [if applicable] The undertaker shall consult with [name of separate conservancy port authority] before exercising the rights conferred on them by this article.~~

[Article 54 is based on Harbour Model Provision 22 in Schedule 3 of the Model Provisions]

Abatement of works abandoned or decayed

54.22—~~(1)~~—(1) Where a ~~tidal work~~Marine Work is abandoned, or ~~suffered to fall~~falls into decay, the ~~Secretary of State~~Welsh Ministers may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the ~~Secretary of State~~Welsh Ministers thinks proper.

(2) Where a work consisting partly of a ~~tidal work~~Marine Work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the ~~Secretary of State~~Welsh Ministers may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the ~~Secretary of State~~Welsh Ministers may take whatever steps the ~~Secretary of State~~Welsh Ministers considers appropriate to achieve the result required by the notice; and any expenditure incurred by the ~~Secretary of State~~Welsh Ministers in so doing ~~shall~~will be recoverable from the undertaker.

[Article 55 is identical to Harbour Model Provision 23 in Schedule 3 of the Model Provisions]

Survey of Marine Works

55.23 If the Welsh Ministers considers it expedient to do so, the Welsh Ministers may order a survey and examination of a Marine Work or of the site on which it is proposed to construct the work, and any

^a 1995 c.21.

expenditure incurred by the Welsh Ministers in any such survey and examination will be recoverable from the undertaker.

[Article 56 is based on Harbour Model Provision 24 in Schedule 3 of the Model Provisions]

Lights on Marine Tidal Works etc. during construction

56.24—(1) The undertaker must at or near—

- (a) any Marine Work, including any temporary work; or
- (b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article ~~7~~ 50 (Subsidiary works), within the area of seaward construction activity,

during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying of such work or development, exhibit every night from sunset to sunrise and in periods of restricted visibility such lights if any, and take such other steps for the prevention of danger to navigation ~~as the Secretary of State [and the conservancy authority if applicable or, failing agreement between them, the Secretary of State]~~ Trinity House and the Welsh Ministers may from time to time direct.

[Article 57 is based on Harbour Model Provision 25 in Schedule 3 of the Model Provisions]

Provision against danger to navigation

57.25 In case of damage to, or destruction or decay of, a Marine tidal Work or any part of it, the undertaker must as soon as reasonably practicable notify ~~[separate conservancy authority if applicable and]~~ Trinity House and must lay down such buoys, exhibit such lights, and take such other steps for preventing danger to navigation, as ~~[separate conservancy authority if applicable and]~~ Trinity House may direct from time to time.

[Article 58 is based on Harbour Model Provision 26 in Schedule 3 of the Model Provisions]

Permanent lights on Marine tidal Works

58.26 After the completion of a tidal Marine Work the undertaker ~~shall at the outer extremity of it~~ must as directed by Trinity House, exhibit every night from sunset to sunrise and in periods of restricted visibility such lights, if any, and take such other steps for the prevention of danger to navigation, as ~~[the separate conservancy authority if applicable and] [or, failing agreement between them, the conservancy authority]~~ Trinity House may from time to time direct.

[Article 59 is not a Model Provision]

Safety of navigation

59.—(1) No Marine Works are to be commenced until a scheme to secure safety of navigation has been submitted to and approved in writing by the Maritime and Coastguard Agency following appropriate consultation with Trinity House.

(2) The approved scheme must make provision for —

- (a) additional aids to navigation and the reporting by the undertaker of aids to navigation to Trinity House;
- (b) retention of safety vessels; and
- (c) the circumstances where Her Majesty's Coastguard should be notified of any matter.

(3) The Marine Works are to be carried out in accordance with the approved scheme except to the extent that a variation to the approved scheme is approved by the persons mentioned in paragraph (1).

[Article 60 is based on Harbour Model Provision 27 in Schedule 3 of the Model Provisions]

Rights to lease etc.

~~60. 27.~~ ~~(1)~~ The undertaker may at any time lease or grant for the purposes of the harbour undertaking the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the harbour undertaking for such period or periods and on such terms and conditions as may be agreed between the undertaker and the persons taking the same.

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the undertaker other than those specified in sub- paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964 (object for whose achievement harbour revision orders may be made).^a

(3) A person—

(a) exercising powers conferred by this Order; or

(b) carrying out any development under planning permission granted by article 3 (Development consent, etc. granted by Order) of, and Part 17 of Schedule 2 (development by statutory undertakers) to, the 1995 Order,

in pursuance of a lease or grant under paragraph (1) (“the lessee or grantee”) is subject to the same restrictions, liabilities and obligations as would apply under this Order or by virtue of any agreement or undertaking by the undertaker if those “owers” were exercised, or the development carried out, by the undertaker.

(4) The provisions of this Order or of any such agreement or undertaking, as respects any such exercise of powers or carrying out of development by the lessee or grantee, have effect (where the context so permits) as if any reference in those provisions to the undertaker included a reference to the lessee or the grantee, as the case may be.

[Article 61 is not a Model Provision]

Byelaws

61.—(1) The undertaker may, from time to time, make and enforce byelaws regulating the use and operation of the authorised development or the harbour, the maintenance of order on and about the authorised development or the harbour and the conduct of all persons including employees of the undertaker while on and about the authorised development or the harbour.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may provide for—

(a) regulating the use, operation and superintendence of the harbour and the berths, quays, piers, warehouses, sheds, landing places, equipment, works and conveniences (including moorings) in the harbour;

(b) regulating the admission to, the movement within, and the departure from, the harbour of vessels, or the removal of vessels;

(c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour;

(d) regulating the berthing and mooring of vessels within the harbour;

(e) preventing damage or injury to any goods, vehicles, plant, machinery, property or person within the harbour;

(f) regulating the conduct of all persons within the harbour not being members of a police force or officers or servants of the Crown whilst in the execution of their duties;

(g) regulating the placing and maintenance of moorings within the harbour;

(h) preventing and removing obstructions or impediments within the harbour;

^a 1964 c.40.

- (i) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
- (j) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (i);
- (k) regulating the launching of vessels within the harbour;
- (l) prohibiting persons in or entering the harbour, or any part of the harbour, from smoking in open spaces in the harbour;
- (m) regulating the movement and parking of vehicles within the harbour;
- (n) regulating the exercise of the powers vested in the harbour master;
- (o) safety precautions to be observed by persons within the harbour, whether or not on board vessels;
- (p) the protection and conservation of flora and fauna and other natural features;
- (q) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and for authorising the harbour master to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
- (r) regulating the admission and access to the Marine Works forming part of the authorised development;
- (s) preventing and removing obstructions or impediments within the authorised development;
- (t) preventing damage or injury to any goods, vehicles, plant, machinery, property or persons within the authorised development;
- (u) regulating the activities of divers, surfers, water skiers and other persons engaged in recreational pursuits within the authorised development;
- (v) prohibiting persons in or entering the authorised development from smoking in open spaces; and
- (w) preventing nuisances on the authorised works.

(3) Byelaws made under this article may—

- (a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given under them, fines not exceeding level 3 on the standard scale;
- (b) relate to the whole of the harbour or the authorised development or to any part of the harbour and the authorised development; or
- (c) make different provision for different parts of the harbour or in relation to different classes of vessels or vehicles.

(4) Byelaws made by the undertaker under this Order come into force only when they have been confirmed by the Welsh Ministers.

(5) Before applying for any byelaws to be confirmed under this article, the undertaker must publish a notice of its intention to apply for the byelaws to be confirmed once in each of two successive weeks in a local newspaper circulating in the area of the authorised development.

(6) The notice must state—

- (a) the place at which and the times during which a copy of the proposed byelaws is to be available for public inspection; and
- (b) that persons may make representations about the proposed byelaws to the Welsh Ministers in writing within the period specified in the notice being a period of not less than 28 days after the date of publication of the last notice required by paragraph (5).

(7) For at least 28 days after the publication of the last notice required by paragraph (5), a copy of the proposed byelaws must be available for public inspection without payment at the principal office of the undertaker in the area of the authorised development at all reasonable times.

(8) The undertaker must supply a copy of the proposed byelaws or part of the proposed byelaws to a person who applies for it on payment of a reasonable charge.

(9) During the period specified in the notice in accordance with paragraph (5), any person may make representations about the proposed byelaws to the Welsh Ministers in writing.

(10) The Welsh Ministers may, after the expiry of the period specified in the notice in accordance with paragraph (6)(b), confirm with or without modification or may refuse to confirm any of the proposed byelaws submitted and may fix a date on which any byelaws so confirmed are to come into force, and, if no date is so fixed, the byelaws come into force after the expiry of 28 days after the date on which they were confirmed.

(11) The Welsh Ministers may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as the Welsh Ministers may consider appropriate for the purpose of defraying any administrative expenses incurred by the Welsh Ministers in connection with confirmation, modification or refusal.

(12) A copy of any byelaws confirmed under this article must be printed and must be available for public inspection without payment at the principal office of the undertaker in the area of the authorised development at all reasonable times, and the undertaker must at the request of any person supply that person with a copy of such byelaws on payment of a reasonable charge.

(13) Byelaws under this article may vary or revoke any byelaws in respect of the authorised development made under any other provision at any time.

[Article 62 is not a Model Provision]

General directions to vessels

62.—(1) Subject to paragraph (3), the undertaker may give directions, or revoke or amend directions that it has previously given, for the purpose of—

- (a) designating areas, routes or channels in the harbour and the approaches to the harbour which vessels are to use, or refrain from using, for movement or mooring;
- (b) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master to identify the vessel, its cargo and its likely time of arrival at and departure from the harbour; and
- (c) the protection of property, flora and fauna.

(2) Directions given under paragraph (1) may apply —

- (a) to all vessels or to a class of vessels designated in the direction;
- (b) to the whole of the harbour and the approaches and channels leading to the harbour, or to a part designated in the direction; and
- (c) at all times or at certain times or at certain states of tide designated in the direction,

and every direction given under this article must specify the extent of its application in relation to the matters referred to in sub-paragraphs (1)(a), (b) and (c).

(3) Before giving a direction, or revoking or amending a direction previously given, under paragraph (1), the undertaker must consult the Royal Yachting Association and the Chamber of Shipping.

[Article 63 is not a Model Provision]

Publication of general directions

63.—(1) Notice of the giving of a general direction or of any amendment or revocation of a general direction must, except in case of emergency, be published by the undertaker as soon as practicable once in Lloyd's List newspaper or some other newspaper specialising in shipping news; and, if the notice relates to the giving or amendment of a direction, the notice must state a place at which copies of the direction or the amended direction (as the case may be) may be inspected and bought, and the price of the direction or amended direction (as the case may be).

(2) In an emergency, notice of the giving of a general direction or of any amendment or revocation of a general direction may be given in any manner the undertaker considers appropriate.

[Article 64 is not a Model Provision]

Special directions to vessels

64.—(1) The harbour master may give a special direction under this article—

- (a) requiring any vessel anywhere within the harbour or the approaches to the harbour to comply with a requirement made in or under a general direction;
- (b) regulating the time at which and the manner in which any vessel must enter into, go out of, or lie in or at the harbour;
- (c) for securing that vessels move only at certain times or during certain periods;
- (d) prohibiting the mooring of vessels in any particular part or parts of the harbour;
- (e) regulating or requiring the movement, mooring or unmooring of a vessel; and
- (f) regulating the manner in which within the harbour a vessel takes in or discharges (from ship to shore or shore to ship) personnel, cargo, fuel, water, ship's stores or ballast in the harbour.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(3) The harbour master may revoke or amend a special direction at any time.

[Article 65 is not a Model Provision]

Master's responsibility to be unaffected

65. The giving of a general direction under article 62 (General direction to vessels) or a special direction under article 64 (Special directions to vessels) does not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to that vessel, persons on board, its cargo or any other person or property.

[Article 66 is not a Model Provision]

Failure to comply with directions

66. The master of a vessel who fails without reasonable excuse to comply with a general direction issued under article 62 (General direction to vessels) or a special direction issued under article 64 (Special directions to vessels) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

[Article 67 is not a Model Provision]

Enforcement of special directions

67.—(1) Without prejudice to any other remedy available to the undertaker, if a special direction issued under article 64 (Special directions to vessels) is not complied with within a reasonable time the harbour master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board the vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but the harbour master must not do so unless, after reasonable inquiry has been made, the master of the vessel cannot be found.

(3) Expenses incurred in the exercise of the powers conferred by this article are recoverable by the undertaker from the owner of the vessel as if they were a charge of the undertaker in respect of the vessel.

[Article 68 is not a Model Provision]

Boarding of vessels

68. (1)—Any duly authorised officer of the undertaker may, on producing if so required his authority, enter and inspect a vessel in the harbour limits—

- (a) for the purposes of any enactment relating to the harbour authority or of any byelaw relating to the harbour authority or of any direction or byelaw of the harbour authority, including the enforcement thereof; or
- (b) to prevent or extinguish fire,

but, except in an emergency, no entry must be made under this article without notice first having been given to the owner or the person appearing to have charge of the vessel; and the notice must have annexed to it a copy of this article.

[Article 69 is not a Model Provision]

Charges

69.—(1) The undertaker may levy charges for any services performed by it in the exercise and performance of its statutory powers and duties at the harbour.

(2) The undertaker may confer total or partial exemption from, allow rebates to or make compositions with any person with respect to, charges and may vary or extinguish any such exemption, rebate or composition.

(3) In this article “charges” means any charges other than ship, passenger and goods dues.

[Article 70 is not a Model Provision]

Use of Marine Off-Loading Facility

70. The undertaker may only use the Marine Off-Loading Facility for the purposes of, or in connection with, the construction, operation, maintenance and decommissioning of the authorised development.

[Article 71 is identical to Harbour Model Provision 53 of Schedule 3 of the Model Provisions]

Saving for Trinity House

53. 71 Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

PART 8

MISCELLANEOUS AND GENERAL

[Model Provision 17 has been incorporated into article 72]

Removal of human remains

1772.-- (1) In this article "*the specified land*" means ~~insert description of the land~~ land within the Order Limits.

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

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

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

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

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

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

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

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

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

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

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

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

(9) If—

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

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

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

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

(e) subject to paragraph (10) the undertaker shall remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves shall be re-interred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

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

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

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

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

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

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

[Article 73 is based on General Model Provision 35 in Schedule 1 of the Model Provisions]

Application of landlord and tenant law

7335--- (1) This article applies to—

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

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

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

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

(3) Accordingly, no such enactment or rule of law shall 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

^a 1857 c. 81. There are amendments to this Act which are not relevant to this Order.

^b 1857 c.81.

- (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.

[Article 74 is based on General Model Provision 36 in Schedule 1 of the Model Provisions]

Operational land for purposes of the 1990 Act

~~7436.~~--Development consent granted by this Order ~~shall~~ is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

[Model provision 37 and 38 not used.]

~~Deemed consent under section 34 of the Coast Protection Act 1949~~

~~37.~~--The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949¹⁷ to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.

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

~~38.~~--The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985¹⁸ to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.

[Article 75 is based on General Model Provision 39 in Schedule 1 of the Model Provisions]

Felling or lopping of trees and removal of hedgerows

~~7539.~~-- (1) The undertaker may fell or lop any tree or shrub near any part of the authorised ~~development project~~, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from:—

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause ~~shall do no~~ unnecessary damage to any tree or shrub and ~~shall~~ must pay compensation to any person who sustains any ~~for~~ any loss or damage arising from such activity for that loss or damage.

(3) The undertaker may, for the purposes of the authorised development:

- (a) subject to paragraph (2), remove any hedgerows within the Order Limits that may be required for the purposes of carrying out the authorised development; and
- (b) remove important hedgerows identified in Schedule 17 (Removal of important hedgerows).

¹⁷—1949 c. 74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.

¹⁸—1985 c. 48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.

(4) The power conferred by paragraph (3) removes any obligation upon the undertaker to secure any consent under the Hedgerow Regulations 1997^(a).

(5) Nothing in this article authorises any works to any tree subject to a Tree Preservation Order.

~~(3)~~(6) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall~~must~~ be determined under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(7) In this article, "hedgerow" and "important hedgerow" have the meaning given in the Hedgerow Regulations 1997

[Model provision 40 not used.]

Trees subject to tree preservation orders

~~40.--(1) The undertaker may fell or lop any tree described in Schedule J [and identified on the [insert name] plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—~~

- ~~(a) —from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or~~
- ~~(b) —from constituting a danger to passengers or other persons using the authorised project.~~

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

- ~~(a) —the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~
- ~~(b) —the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.~~

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

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

[Article 76 is based on General Model Provision 41 in Schedule 1 of the Model Provisions]

Certification of plans etc

~~7641.--~~ (1) The undertaker ~~shall~~must, as soon as practicable ~~after~~ the date on which~~making of this~~ Order is made, submit to the Secretary of State ~~decision-maker~~ copies of—

- (a) Order Limits Plans;
- (b) the ~~w~~Works ~~p~~Plans;
- (c) Parameter Plans
- (d) the ~~H~~and ~~p~~Plans;

^a S.I. 1997/1160, amended by section 73(2) of the Countryside and Rights of Way Act 2000 (c.37) S.I. 2003/2155, S.I. 2006/1177, S.I. 2009/1307, S.I. 2013/755 and S.I. 2015/377.

- ~~(ee) the Rights of Way Plan;~~
- (f) Detailed Design Drawings;
- ~~(ag) the Book of Reference;~~
- (h) Design and Access Statement;
- ~~(b) the land plan;~~
- ~~(e) the rights plan;~~
- ~~(d) the works plan;~~
- (i) Wylfa Newydd CoCP;
- (j) Wylfa Newydd CoOP;
- (k) Power Station Main Site sub-CoCP;
- (l) Marine Works sub-CoCP;
- (m) Off-site Power Station Facilities sub-CoCP;
- (n) Parc Cybi Logistics Centre sub-CoCP;
- (o) Dalar Hir Park and Ride sub-CoCP;
- (p) A5025 Off-line Highway Improvements sub-CoCP;
- (q) Environmental Statement;
- (r) Landscape and Habitat Management Strategy;
- (s) Workforce Management Strategy;
- (t) Phasing Strategy; and
- (u) Construction Method Statement;
- ~~(e) the sections; and~~
- ~~(f) any other plans or documents referred to in this Order;~~

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

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

[Article 77 is based on Model Provision 43 from the TWA Model Provisions]

Service of notices

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

- (a) by post; or
 - (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied;
- or

(c) with the consent of the recipient and subject to paragraphs (6) to (9), by electronic transmission.

(3) 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.

(4) For the purposes of section 7 of the Interpretation Act 1978^a (references to service by post) 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.

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

(a) addressing it to that person by 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.

(6) Paragraphs (6) to (9) apply where a person (“A”) is required or authorised to serve or send a notice or other document for the purposes of this Order on or to another person (“B”).

(7) A may serve or sending the notice or other document by electronic transmission if—

(a) B has sent A notice that B agrees to receive that notice or document (or notices and documents of a description including that notice or document) by electronic transmission;

(b) B has not subsequently withdrawn that agreement in accordance with paragraph (8); and

(c) A complies with any conditions as to addressing or mode of transmission that B has specified in agreeing to receive notices or other documents by electronic transmission.

(8) If B notifies A within 7 days of receiving a notice or other document by electronic transmission that B requires a paper copy of all or any part of the notice or other document, A must provide B with such a copy as soon as reasonably practicable.

(9) B may withdraw agreement to receive a notice or document (or notices or documents of a specified description) by electronic transmission by sending a notice to that effect to A.

(10) Notice under paragraph (8) is final and takes effect on a date specified by B in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

(12) In this article “electronic transmission” means a communication transmitted—

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

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

[Article 78 is based on General Model Provision 42 in Schedule 1 of the Model Provisions]

Arbitration

7842.---Any difference or dispute under any provision of this Order, unless otherwise provided for in this Order or unless otherwise agreed between the parties, is to be ~~shall~~ 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 by the Secretary of State ~~insert appropriate body~~.

^a 1978 c.30. There are amendments made to the Interpretation Act 1978 which are not relevant to this Order.

[Article 79 is not a Model Provision]

Procedure in relation to certain approvals etc.

79.—(1) Schedule 18 (Procedure for approvals, consents and appeals) is to have effect in relation to all consents, agreement or approvals granted, refused or withheld in relation to the Requirements unless otherwise agreed between the undertaker and the discharging authority.

(2) The procedure set out in paragraph (1) relating to appeal process of Schedule 18 has effect in relation to any other consent, agreement or approval required under this Order (including the Requirements) where such consent, agreement or approval is granted subject to any condition to which the undertaker objects, or is refused or is withheld.

[Articles 80 and 81 incorporate Model Provision 6]

Application, exclusion and modification of legislative provisions

80. Part 1 of Schedule 19 (Miscellaneous controls) to this Order, which makes provision applying, modifying and excluding local legislation which relate to matters for which provision may be made by this Order, has effect.

Amendment of local legislation

81. Part 2 of Schedule 19 (Miscellaneous controls) to this Order, which makes provision applying, modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order, has effect.

[Article 82 is not a Model Provision but has been agreed with the Crown Estate.]

Crown rights

82.—(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 undertaker or any lessee or licensee—

- (a) to enter upon, use and carry out the authorised development on or in any manner interfere with any land or rights of whatsoever description—
 - (i) 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;
 - (ii) 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
 - (iii) 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; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and will be deemed to have been given in writing where it is sent electronically.