

Planning Act 2008

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

The Port Talbot Steelworks (Power Generation Enhancement) Order

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INFRASTRUCTURE PLANNING

**The Port Talbot Steelworks (Power Generation Enhancement)
Order**

<i>Made</i> - - - -	201*
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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 37, 114, 115, 120 and 140 of the Planning Act 2008(b) (“the 2008 Act”).

The application was examined by a person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The appointed person, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application [with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals].

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 140 of the 2008 Act, makes the following Order—

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Port Talbot Steelworks (Power Generation Enhancement) Order and comes into force on [***].

Interpretation

2.—(1) In this Order—

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

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

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

(a) S.I. 2009/2264, as amended by S.I. 2010/493, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, and S.I. 2013/522.

(b) 2008 c.29.

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

(d) 1961 c.33. 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.

(e) 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). 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 section 139 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.

(f) 1980 c.66. Section 1(1) was amended by section 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); 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

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

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

“the 2008 Act” means the Planning Act 2008;

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

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

“appeal documentation” means a copy of the application submitted to the relevant planning authority and any supporting documentation which the undertaker may wish to provide;

“appeal parties” means the relevant planning authority, the undertaker, and (where relevant) a requirement consultee;

“authorised development” means the development described in Schedule 1 (authorised development) to this Order;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

“business day” means a day other than a Saturday or a Sunday or public holiday in Wales;

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

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

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

“the design principles document” means the document certified by the Secretary of State as the design principles documents for the purposes of this Order;

“electronic transmission” means a communication transmitted—

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

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

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

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

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 3 and shown on the works plans;

“maintain” includes to inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, and any derivative of “maintain” must be construed accordingly;

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 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.

- (a) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (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.
- (b) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

“this Order” means the Port Talbot Steelworks (Power Generation Enhancement) Order 2011[*];

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

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

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

“relevant planning authority” means Neath Port Talbot County Borough Council as the planning authority for the area in which the authorised development is situated;

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

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that requirement;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

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

“the substation works” means the modifications to the Grange and Cefn Gwrgan substations comprising Work No. 2(b) in Schedule 1 (authorised development) to this Order;

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

“undertaker” means Tata Steel UK Limited (company number 2280000), which is the named undertaker, or any other person who for the time being has the benefit of this Order in accordance with article 7 of this Order and section 156 of the 2008 Act for such time as that section applies to that person;

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

“the works plans” means the plans certified as the works plans by the Secretary of State 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.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) A reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A”), is a reference to the work so designated in Schedule 1 (authorised development).

(5) The expression “includes” is to be construed without limitation.

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

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

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

PART 2

Principal powers

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits and in accordance with the works plans.

(2) In constructing or maintaining any of the authorised development, the undertaker may deviate laterally from the lines or situations shown on the works plans within the limits of deviation relating to that work shown on those plans.

Power to maintain authorised development

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

(2) In maintaining the authorised development the undertaker may remove or replace any constituent part but not the whole of any numbered work listed in Schedule 1 (authorised development).

Operation of generating station

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

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

Benefit of Order

6. Subject to article 7 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

7.—(1) The undertaker may with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order 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.

(2) The requirement to obtain the consent of the Secretary of State under paragraph (1) does not apply to a transfer or grant to a licence holder within the meaning of Part 1 of the Electricity Act 1989 of the benefit of such provisions of this Order and related statutory rights as may be agreed between the undertaker and the licence holder as being reasonably necessary for the purposes of carrying out the substation works.

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

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraphs (1) and (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with the noise management plan approved by the relevant planning authority as described in requirement 11; or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise approved by the relevant planning authority as described in requirement 14; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

PART 3

Streets

Street works

9.—(1) In relation to any of the streets within the Order limits, the undertaker may, for the purposes of the authorised development—

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

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

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

PART 4

Supplemental powers

Discharge of water

10.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

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

(4) The undertaker may 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 may not be unreasonably withheld; and

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

(5) The undertaker may 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 other than in accordance with a consent granted by Natural Resources Wales.

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, Natural Resources Wales, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

Authority to survey and investigate the land

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

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(a) 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.

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

(c) 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.

(d) 1991 c.57, amended by sections 100(1) and 120(1) of, paragraph 128 of Schedule 22 to, and Schedule 24 to the Environment Act 1995 (c.25).

- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

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

- (a) must, if so required, before entering the land, produce written evidence of 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 may be made under this article—

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

but such consent must not be unreasonably withheld.

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

PART 5

Powers of acquisition

Compulsory acquisition of rights

12.—(1) The undertaker may create and compulsorily acquire the new rights affecting the Order land described in Part 1 of the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act (provisions as to divided land), as substituted by paragraph 5 of Schedule 3 to this Order, where the undertaker acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

13.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order were a compulsory purchase order.

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

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

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

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

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

- (5) In that section, for subsections (5) and (6) there is substituted—
- “(5) For the purposes of this section, a person has a relevant interest in land if—
- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
 - (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

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

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

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

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

Compulsory acquisition of land – incorporation of the mineral code

- 14.** Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order subject to the modifications that—
- (a) paragraph 8(3) is not incorporated; and
 - (b) for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire rights compulsorily

- 15.—**(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 may be served under Part 1 of the 1965 Act; and
 - (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 14 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

Application and modification of legislative provisions

16. Subject to the modifications set out in Schedule 3 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right as they apply to the compulsory purchase of land and interests in land.

Statutory authority to override easements and other rights

- 17.—**(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(1) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—
- (a) an interference with an interest or right to which this article applies; or
 - (b) a breach of a restriction as to use of land arising by virtue of contract.
- (2) The undertaker must pay compensation to any person whose land is injuriously affected by—
- (a) an interference with an interest or right to which this article applies; or
 - (b) a breach of a restriction as to use of land arising by virtue of contract,
- authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

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

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

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

Acquisition of subsoil or airspace only

18.—(1) The undertaker may acquire compulsorily such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 12 (compulsory acquisition of rights) as may be required for any purpose for which rights over that land may be acquired under that provision.

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

Private rights

19.—(1) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and are unenforceable or, where so notified by the undertaker, extinguished insofar as in either case their continuance would be inconsistent with the exercise by the undertaker of the rights acquired—

- (a) as from the date of the acquisition of the rights 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 earliest.

(2) Subject to the provisions of this article, any private rights over the Order land owned by the undertaker are suspended and are unenforceable or, where so notified by the undertaker, extinguished insofar as in either case their continuance would be inconsistent with any activity authorised by this Order—

- (a) in the case of a suspension, as from the commencement of the activity authorised by this Order which interferes with such rights; and
- (b) in the case of an extinguishment, on the date specified in the notice given by the undertaker.

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

(4) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 20 (statutory undertakers) applies.

(5) Paragraph (1) has effect subject to any agreement made, in so far as it relates to the authorised development, at any time between the undertaker and the person in or to whom the right in question is vested, belongs or benefits.

(6) If any such agreement as is referred to in paragraph (5)—

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

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

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

Statutory undertakers

20. Subject to the provisions of Part 6 (protective provisions) the undertaker may extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

PART 6

Protective provisions

For the protection of railway interests

21. The provisions of Schedule 5 (for the protection of railway interests) have effect.

For the protection of Western Power Distribution

22. The provisions of Schedule 6 (for the protection of Western Power Distribution) have effect.

For the protection of National Grid

23. The provisions of Schedule 7 (for the protection of National Grid) have effect.

For the protection of Dŵr Cymru Cyfyngedig

24. The provisions of Schedule 8 (for the protection of Dŵr Cymru Cyfyngedig) have effect.

For the protection of Associated British Ports

25. The provisions of Schedule 9 (for the protection of Associated British Ports) have effect.

PART 7

Miscellaneous and general

Application of landlord and tenant law

26.—(1) This article applies to—

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

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

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall 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
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

27. Development consent granted by this Order shall 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).

Certification of plans, etc.

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

- (a) the book of reference;
- (b) the land plans;
- (c) the works plans;
- (d) the environmental statement;
- (e) the design and access statement; and
- (f) the design principles document.

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

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

Service of notices

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

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

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

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

- (a) in the case of the secretary or clerk of 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.

(a) 1978 c.30. There are amendments to this Act which are not relevant to this Order.

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

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

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

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

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

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

(9) This article is not to be taken to exclude the employment of any method of service not expressly provided for by it.

Procedure in relation to certain approvals

30.—(1) Where an application is made to or request is made of the relevant planning authority, highway authority, or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order or any requirement in Schedule 2 (requirements), such consent, agreement or approval, if given, must be given in writing and must not be unreasonably withheld.

(2) Schedule 4 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements in Schedule 2 (requirements).

Arbitration

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

Signed by authority of the Secretary of State for Energy and Climate Change

Address

Signature
Title

Date

Department

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County Borough of Neath Port Talbot—

The construction, operation and maintenance of a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, comprising—

Work No. 1A – an electricity generating station located on the site of the Port Talbot steelworks, with a nominal gross electrical output capacity of up to 150 MWe, fuelled by gases produced during the steelmaking process with natural gas provided as a back up, comprising the following works—

- (a) up to two steam boilers and their associated stacks, boiler house and annexe bay;
- (b) a set of steam turbo-alternators and their associated condensers and turbine building;
- (c) a 66kV electricity switchgear station building containing gas insulated switchgear and associated control rooms, and infrastructure (including cables) to provide a connection to Work No. 2;
- (d) a cooling tower unit comprising—
 - (i) a cooling tower;
 - (ii) a cooling tower electrical control room; and
 - (iii) cooling water pump house;
- (e) ancillary buildings, structures and plant including—
 - (i) electrical equipment,
 - (ii) administration and control building;
 - (iii) main and auxiliary transformers;
 - (iv) condensate polisher, condensate pumps and condensate storage tank;
 - (v) oil water separator;
 - (vi) water treatment plant and chemical dosing system skids;
 - (vii) boiler feed pumps;
 - (viii) low pressure gas boosters; and
 - (ix) emissions monitoring system;
- (f) pipe racks;
- (g) fire protection system; and
- (h) car parking area.

Work No. 1B – development comprising a construction compound, temporary laydown storage area, and temporary construction site offices.

Work No. 1C – development comprising—

- (a) the connection of Work No. 1A to the existing onsite infrastructure through—
 - (i) the extension of existing pipe work (for water, nitrogen, process gases, natural gas, steam and compressed air); and
 - (ii) connections to the drainage systems, electrical cables and other utilities;

- (b) security infrastructure including perimeter fencing;
- (c) internal roadways including connections to the existing internal roadway;
- (d) site drainage and waste management infrastructure;
- (e) landscaping including tree planting, fencing and other boundary treatments; and
- (f) site lighting infrastructure.

Work No. 2 – development comprising—

- (a) the installation of 66kV electrical cables approximately 2.8km in length from Work No. 1A to the Grange and Cefn Gwrgan substations. The cables will either be installed underground or supported for part of the route by existing above-ground structures or, if necessary, by a steel lattice cable bridge to be erected between the two substations; and
- (b) modifications to the Grange and Cefn Gwrgan substations to accept the electrical cables, including the installation of new 66kV bays at each substation, consisting of an open 66kV bus bar arrangement, incorporating—
 - (i) bus bar isolators;
 - (ii) GIS circuit breakers;
 - (iii) line isolator and earth switches;
 - (iv) voltage transformers;
 - (v) interconnecting 66kV open bus bars;
 - (vi) cable sealing ends;
 - (vii) associated system earth requirements; and
 - (viii) protection and control equipment,

and in connection with such works and to the extent that they do not form part of any such work, further development comprising—

- (a) construction laydown areas, working sites, storage areas, temporary top soil storage areas and temporary structures including temporary fencing and lighting;
- (b) modifications to the existing internal road layout for the provision of site vehicular access, parking and cycle storage; and
- (c) works to alter the position of apparatus below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus;
- (d) works for the benefit or protection of land affected by the authorised development;
- (e) footpaths, cycle tracks, shafts, foundations, retaining walls, drainage, fencing and culverts;

and such other works as may be necessary or expedient for the purposes of or in connection with the construction of the above works but only within the Order limits and insofar as such development is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Articles 3 and 30

Interpretation

1.—(1) In this Schedule—

“commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words “commence” and “commenced” and cognate expressions shall be construed accordingly;

“commissioning” means the process during which plant components and systems, having been constructed or modified, are made operational and are tested and verified to be in accordance with design assumptions and to have met the appropriate safety criteria; and

“stage” means a defined stage of the construction of the authorised development, the extent of which is set out in the notice given to the relevant planning authority under requirement 3 (stage of authorised development).

(2) Where any requirement provides that the authorised development is to be carried out in accordance with details, or a scheme, plan or other document approved or agreed by the relevant planning authority the approved or agreed details, scheme, plan or other document is taken to include any amendments or revisions subsequently approved or agreed by the relevant planning authority.

Time limits

2.—(1) The authorised development must be commenced within 5 years of the date of this Order.

(2) If the authorised development is constructed in two stages in accordance with the procedures set out in requirement 3 (stages of authorised development), the second stage must be commenced within 10 years of the commencement of the first stage.

Stages of authorised development

3.—(1) No authorised development may commence until the undertaker has given a written notice to the relevant planning authority confirming whether the authorised development is to be constructed in one stage or two stages.

(2) The notice given to the relevant planning authority under sub-paragraph (1) must set out the extent of the authorised development that is to be constructed in each stage which must not exceed the maximum parameters for the relevant stage set out in requirement 4 (detailed design).

(3) The authorised development must be constructed in accordance with the number of stages specified in the notice given to the relevant planning authority under this requirement.

Detailed design

4.—(1) Subject to sub-paragraph (3), the elements of the authorised development listed in column (1) of the table below must not exceed the maximum dimensions set out in relation to that element in columns (2) to (4) of the table and must comply with the other parameters specified in column (5)—

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres)</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Stacks	80	-	-	Maximum of 2. Minimum height of 80 metres.
Cooling tower unit	22	25	160	Maximum area of 2,560 m ² . Maximum volume of 56,320 m ³ .
Turbine hall	25	85	55	Maximum area of 3,575 m ² . Maximum volume of 89,375 m ³ .
Boiler house	35 (at apex)	65	60	Maximum area of 3,900 m ² . Maximum volume of 136,500 m ³ .
Switchgear station	20	55	35	-
Administration and control building	12	28	50	-
Water treatment plant incorporating chemical dosing skids, condensate polisher, condensate pumps and condensate storage tank	10	60	60	-
66kV electrical connection (Work No. 2a)	-	4	-	-

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres)</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Cable bridge for section of 66kV electrical connection (Work No. 2a)	5.5	4	800	The cable bridge may only be installed for the section of Work No. 2A between the Grange and Cefn Gwrgan substations.
Car parking area	-	-	-	Maximum of 30 parking spaces.
Perimeter fencing	3	-	-	-

(2) Subject to sub-paragraph (3), if the authorised development is constructed in two stages—

- (a) the elements of the authorised development constructed at the first stage must not exceed the maximum dimensions set out in columns (2) to (4) of the table below and must comply with the other requirements specified in column (5); and

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres)</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Stack	80	-	-	Maximum of 1. Minimum height of 80 metres.
Cooling tower unit	22	25	80	Maximum area of 1,280 m ² . Maximum volume of 28,160 m ³ .
Turbine hall	25	45	55	Maximum area of 2,475 m ² . Maximum volume of 61,865 m ³ .
Boiler house	35 (at apex)	45	60	Maximum area of 2,700 m ² . Maximum volume of 94,500 m ³ .
Switchgear station	20	55	35	-

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres)</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Administration and control building	12	28	50	-
Water treatments plant incorporating chemical dosing skids, condensate polisher, condensate pumps and condensate storage tank	10	60	60	-
66kV electrical connection (Work No. 2a)	-	4	-	-
Cable bridge for section of 66kV electrical connection (Work No. 2a)	5.5	4	800	The cable bridge may only be installed for the section of Work No. 2A between the Grange and Cefn Gwrgan substations.
Car parking area	-	-	-	Maximum of 30 parking spaces.
Perimeter fencing	3	-	-	-

(b) the authorised development when completed at the second stage must not exceed the maximum dimensions and parameters set out in the table in sub-paragraph (1).

(3) The relevant planning authority may at the request of the undertaker approve amendments to the maximum parameters for the turbine hall and boiler house listed in columns (2), (3) and (4) of the tables set out in this requirement, but such approval must not be given except in relation to minor or immaterial amendments which—

- (a) will not result in the parameters set out in column (5) of the tables being exceeded for the relevant building; and
- (b) have been demonstrated to the satisfaction of the relevant planning authority as being unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(4) No stage of the authorised development may commence until for that stage written details of the following have been submitted to and approved by the relevant planning authority—

- (a) the layout, design, external appearance, dimensions and floor levels of all permanent buildings and structures;

- (b) the colour, materials and surface finishes of all permanent buildings and structures; and
 - (c) the durability of all cladding materials.
- (5) The details to be submitted for approval under sub-paragraph (4) must—
- (a) be in accordance with the design and access statement and the design principles document; and
 - (b) include appropriately scaled plans and sectional drawings.
- (6) The authorised development must be carried out in accordance with the approved plans and any other approvals given by the relevant planning authority pursuant to this requirement.

Decommissioning of existing generating station

5.—(1) The undertaker must give written notice (“the completion notice”) to the relevant planning authority within 7 days of the date on which the commissioning of the authorised development is completed.

(2) If the authorised development is constructed in two stages, the obligation in sub-paragraph (1) applies to the completion of commissioning of the second stage of the authorised development.

(3) The undertaker must decommission the existing generating station as soon as reasonably practicable following service of the completion notice having regard to the operational requirements of the steelworks and, in any event, the existing generating station must be decommissioned within two years of the date of the completion notice.

(4) The decommissioning mentioned in sub-paragraph (3) requires that the existing generating station permanently ceases to operate for the purposes of generating electricity, but does not require the undertaker to demolish any part of the existing generating station.

(5) In this requirement “the existing generating station” means—

- (a) Margam A boiler 5;
- (b) Margam B Mitchell boiler;
- (c) service boiler 4;
- (d) service boiler 5;
- (e) turbo alternator TA1;
- (f) turbo alternator TA2; and
- (g) turbo alternator TA3.

Provision of landscaping

6.—(1) No stage of the authorised development may commence until a written landscaping scheme for that stage has been submitted to and approved by the relevant planning authority. The landscaping scheme must be in accordance with the design and access statement and chapter 7 of the environmental statement and must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;

- (h) details of existing trees to be retained, with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant; and
- (j) implementation timetables for all landscaping works.

(2) All landscaping works must be carried out in accordance with the approved landscaping scheme and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) The landscaping works must be carried out in accordance with implementation timetables approved under sub-paragraph (1).

(4) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

Fencing and other means of enclosure

7.—(1) No stage of the authorised development may commence until details of the proposed means of enclosure for that stage (which must be in accordance with the details described in the environmental statement) have been submitted to and agreed in writing with the relevant planning authority.

(2) The means of enclosure agreed under sub-paragraph (1) must be erected prior to the commissioning of the relevant stage of the authorised development.

Archaeology

8.—(1) No authorised development may commence until a written scheme for the investigation of areas of archaeological interest as identified in chapter 11 (cultural heritage and archaeology) of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The scheme approved under sub-paragraph (1) must identify—

- (a) areas where a watching brief is required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found; and
- (b) areas where palaeo-environmental sampling must be carried out prior to the commencement of any of the authorised development to establish the presence and extent of any surviving peat deposits and the measures to be taken where any such deposits are found.

(3) Any archaeological works or watching brief carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists (“CIfA”) or a CIfA member.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme and in consultation with the archaeological planning section of Gwent Glamorgan Archaeological Trust.

Habitat management plan

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

(2) The habitat management plan must include an implementation timetable and must be carried out as approved by the relevant planning authority.

Code of construction practice

10.—(1) No stage of the authorised development may commence until a code of construction practice for that stage has been submitted to and approved by the relevant planning authority.

(2) The code of construction practice, which specifies measures to mitigate the impacts of constructions works, must be substantially in accordance with the outline code of construction practice set out in appendix 15.1 of Volume 3 of the environmental statement and must incorporate the following plans—

- (a) water management plan;
- (b) pollution prevention plan; and
- (c) dust management plan.

(3) The dust management plan required under sub-paragraph (2)(c) must include details of the mechanisms by which failures of dust controls will be investigated and appropriate mitigation or remedial works will be implemented.

(4) All construction works for the authorised development must be carried out in accordance with the approved code of construction practice for that stage, including any plans approved as part of it.

Approval and implementation of construction mitigation plans

11.—(1) No stage of the authorised development may commence until the following plans to minimise the impacts of construction works have been submitted to and approved by the relevant planning authority for that stage—

- (a) a noise management plan, which must be substantially in accordance with section 8.7 of the environmental statement and the outline plan at Appendix 15.1.5 of that document;
- (b) a construction traffic management plan, which must be substantially in accordance with section 10.6 of the environmental statement and the outline plan at Appendix 15.1.6 of that document;
- (c) a waste management plan, which must be substantially in accordance with section 15.10 of the environmental statement and the outline plan at Appendix 15.1.4 of that document; and
- (d) an emergency response and flood management plan, which must be substantially in accordance with section 8.7 of the environmental statement and the outline plan at Appendix 15.1.7 of that document.

(2) The noise management plan required under sub-paragraph (1)(a) must include—

- (a) a piling method statement;
- (b) a construction vibration risk assessment; and
- (c) details of the mechanisms by which failures of noise controls will be investigated and appropriate mitigation or remedial works will be implemented.

(3) The relevant planning authority must consult Royal Mail Group Limited before approving the construction traffic management plan and must have regard to any response provided by Royal Mail Group Limited.

(4) Construction works for the authorised development must be carried out in accordance with the approved plans for that stage referred to in sub-paragraph (1).

External lighting

12.—(1) Not less than three months before commissioning any stage of the authorised development, the undertaker must submit to the relevant planning authority written details of all external lighting to be installed at that stage of the authorised development, and such details must be in accordance with the environmental statement and the design and access statement and must include details of the direction and levels of lighting.

(2) The relevant stage of the authorised development must not be brought into operation until the details submitted under sub-paragraph (1) have been approved by the relevant planning authority and the approved external lighting scheme has been installed.

(3) The approved lighting scheme must be retained for the duration of the operation of the relevant stage of the authorised development.

Construction hours

13.—(1) Construction work for the authorised development must not take place outside the hours of—

- (a) 07:00 to 19:00 on Monday to Friday, and
- (b) 07:00 to 13:00 Saturdays,

excluding public holidays, except with the prior written approval of the relevant planning authority.

Control of noise during operational phase

14.—(1) The undertaker must not commence commissioning of any stage of the authorised development until a written scheme for the management of noise generated by the operation of that stage of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme to be submitted and approved under sub-paragraph (1) must be substantially in accordance with section 8.7 of the environmental statement and must include details of—

- (a) the noise attenuation measures to be taken to minimise operational noise, including any noise limits;
- (b) noise monitoring requirements including the location of monitoring equipment; and
- (c) the measures to be taken, including timescales, to address any noise issues identified.

(3) The noise management scheme must be implemented as approved and maintained for the duration of the operation of the relevant stage of the authorised development.

Surface and foul water drainage

15.—(1) No stage of the authorised development may commence until written details of the surface and foul water drainage system for that stage have been submitted to and approved by the relevant planning authority.

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

Aviation safety

16. The undertaker must install on any chimney stack forming part of Work No.1 aviation warning lighting with such shape, colour and character as specified in guidance issued by the Civil Aviation Authority.

Air quality monitoring

17.—(1) Not less than 12 months prior to the commissioning of any stage of the authorised development, a scheme for the monitoring of ambient concentrations of nitrogen dioxide in the area must be submitted to and approved by the relevant planning authority.

(2) The scheme to be submitted under sub-paragraph (1) must contain details of—

- (a) the locations at which monitoring will take place;
- (b) the monitoring equipment and methods to be used;
- (c) the frequency and duration of monitoring; and

(d) the procedure for reporting the result of the monitoring.

(3) The air quality monitoring scheme must be implemented as approved for the relevant stage of the authorised development.

Contaminated land and groundwater

18.—(1) No stage of the authorised development may commence until for that stage a written scheme to deal with the contamination of any land, including groundwater, which is likely to cause harm to persons, the environment or pollution of controlled waters has been submitted to and approved by the relevant planning authority in consultation with Natural Resources Wales.

(2) The scheme must include an investigation and risk assessment report, prepared by a competent person in accordance with the guidance document which must contain—

- (a) an investigation of the extent, scale and nature of contamination;
- (b) an assessment of the potential risks to human health, the environment and controlled waters;
- (c) a piling method risk assessment; and
- (d) a remediation scheme to bring the site to a condition suitable for the intended use by removing any unacceptable risks to human health, the environment and controlled waters which must contain—
 - (i) details of remediation works to be undertaken;
 - (ii) proposed remediation objectives and remediation criteria; and
 - (iii) site management procedures.

(3) The undertaker must carry out the remediation in accordance with the approved scheme.

(4) Construction of the authorised development must not commence until a verification report which demonstrates the effectiveness of the agreed remediation works (if required) carried out in accordance with sub-paragraph (3) has been submitted to and agreed in writing with the relevant planning authority.

(5) If contaminated land not previously identified is found during the construction of the authorised development no further works for the authorised development are to be carried out until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contaminated land is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(6) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph (5) must be carried out in accordance with the approved scheme.

(7) In this requirement, “the guidance document” means Land Contamination: A Guide for Developers (Welsh Local Government Association and the Environment Agency Wales, 2006).

Construction compound

19.—(1) No stage of the authorised development may commence until for that stage details of the size, layout and location of temporary buildings and structures forming Work No. 1B have been submitted to and approved by the relevant planning authority.

(2) The temporary buildings and structures forming Work No. 1B must be installed in accordance with the approved details.

SCHEDULE 3

Articles 12(1) and 16

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

Compensation enactments

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

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

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

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

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

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

Application of the 1965 Act

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

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

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

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

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard is had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land

(a) 1973 c.26.

of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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

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

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

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

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

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

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

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

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

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

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that

section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

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

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

10.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order the relevant planning authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) in the case of requirement 4—
 - (i) where no further information is requested under paragraph 11, 12 weeks from the day immediately following that on which the application is received by the relevant planning authority;
 - (ii) where further information is requested under paragraph 11, 12 weeks from the day immediately following that on which the further information is received by the relevant planning authority; or
 - (iii) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (b)(i) or (b)(ii); and
- (b) in the case of any other requirement—
 - (i) where no further information is requested under paragraph 11, 8 weeks from the day immediately following that on which the application is received by the relevant planning authority;
 - (ii) where further information is requested under paragraph 11, 8 weeks from the day immediately following that on which the further information is received by the relevant planning authority; or
 - (iii) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (i) or (ii).

Further information

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

(2) If the relevant planning authority considers such further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) If the requirement specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 1 business day of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 1 business day of receipt of such a request and in any event within 21 business days of receipt of the application.

(4) In the event that the relevant planning authority does not give a notification under sub-paragraph (2) or (3) within 21 business days of receipt of the application it shall be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph 11 in relation to part only of an application, that part must be treated as separate from the remainder of the application for the purposes of calculating the time periods mentioned in paragraph 10(2) and paragraph 11.

Appeals

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

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 11 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee (if applicable);
- (b) within 20 business days of receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must as soon as practicable notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person’s attention should be sent;
- (c) the relevant planning authority and the requirement consultee (if applicable) may submit written representations in respect of the appeal to the appointed person within 20 business days beginning with the day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties may make any counter-submissions to the appointed person within 20 business days of receipt of written representations made under sub-paragraph (c); and
- (e) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions made under sub-paragraph (d).

(3) The appointment of a person under paragraph (2)(b) may be made by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the appointed person considers that further information is necessary to consider the appeal the appointed person must as soon as is practicable notify the appeal parties in writing specifying the further information required.

(5) Any further information specified under sub-paragraph (4) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee (if applicable) on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c) to (e).

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

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

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

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

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

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

(10) If an approval is given by the appointed person pursuant to this Schedule, it shall be deemed to be an approval for the purpose of Schedule 2 to this Order as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the appointed person's determination.

(11) The appointed person may or may not be a member of the Planning Inspectorate but shall be a qualified town planner of at least 10 years' experience.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it shall be made, the appointed person must have regard to Welsh Government Circular NAFWC 07/2003 Planning (and analogous) Appeals and Call-in Procedures or any circular or guidance which may from time to time replace it.

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred or imposed by that paragraph.

2. In this Schedule—

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

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

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

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

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

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

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

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

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

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

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements arising from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works under this Order.

4.—(1) The undertaker must not exercise the powers conferred by article 11 (authority to survey and investigate land), article 12 (compulsory acquisition of rights); article 18 (acquisition of subsoil or airspace only); article 19 (private rights), article 20 (statutory undertakers) or the powers

conferred by section 11(3) of the 1965 Act as applied by the Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers and electronic code communications operators: preliminary notices) or article 20 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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

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

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

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

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

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch, and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

(3) Nothing in this Schedule imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

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

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(2), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(1)(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(2) for the relevant part of the authorised works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(2) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

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

(7) In the event of EMI having occurred—

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

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(1)(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 31 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

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

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

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

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

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

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

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

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

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

(6) In this paragraph—

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

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

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

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

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and

- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

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

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

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

FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION

1. The provisions in this Schedule have effect for the protection of WPD, unless otherwise agreed in writing between the undertaker and WPD.

2. In this Schedule—

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

“alternative rights” means all necessary legal easements, consents, or permissions required by WPD to permit or authorise a diversion;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by WPD;

“associated company” means any company which is either a holding company of WPD, a subsidiary of WPD or another subsidiary of the holding company of WPD, and “holding company” and “subsidiary” have the meanings given to them by section 1159 of the Companies Act 2006;

“functions” includes powers and duties;

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

“undertaker” has the meaning given in article 2(1) of the Order except that, for the purposes of this Schedule, it does not include WPD or an associated company of WPD which has the benefit of the Order under a transfer or grant made under article 7;

“WPD” means Western Power Distribution (South Wales) PLC (company number 02366985) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB; and

“WPD Network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act.

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

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

(2) The undertaker must not exercise the powers under the Order to carry out the substation works unless the exercise of such powers is with the consent of WPD.

(3) Where WPD is asked to give its consent under sub-paragraph (2) that consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of WPD.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), WPD, must on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its

reasonable endeavours to obtain the alternative rights in other land in which the alternative apparatus is to be constructed

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 31, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

6.—(1) Not less than 28 days before starting the execution of any works in, on or under any land acquired, held, appropriated or used for the purposes of the authorised development that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to WPD a plan, section and description of the works to be executed. For the avoidance of doubt, if any works referred to require any diversion or require WPD to obtain any alternative rights, the undertaker must give WPD sufficient notice to obtain any such alternative rights and shall not commence works of the type described unless or until any such alternative rights have been obtained.

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

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

(4) If WPD in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 4 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than the reasonable period provided for in sub-paragraph (3) before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

(2) The value of any apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal and agreed between the parties.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 31 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had

been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to WPD by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

(5) An amount which apart from this sub-paragraph would be payable to WPD in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on WPD 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.

8. The undertaker will indemnify WPD and keep WPD indemnified in respect of any direct losses, costs, claims or liabilities arising out of, or as a consequence of the works authorised by the Order and anything done under this Schedule.

9. Any difference or dispute arising between the undertaker and WPD under this Schedule shall, unless otherwise agreed in writing between the undertaker and WPD, be determined by arbitration in accordance with article 31 (arbitration) of the Order.

FOR THE PROTECTION OF NATIONAL GRID

Application

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

Interpretation

2. In this Schedule—

“acceptable insurance” means third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £10,000,000 (Ten Million Pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the entire construction period of the authorised development and arranged with underwriters whose security/credit rating is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group; and (ii) “A3” if the rating is assigned by Moody’s Investors Services Inc.;

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

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid;

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

“commence” has the same meaning as under paragraph 1 of Schedule 2 (requirements) and commencement shall be construed to have the same meaning;

“functions” includes powers and duties;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH;

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

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

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

(a) 1989 c.29.

Acquisition of land

4.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 6 sub-paragraph (1) below) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National

Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph 6 sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 31 of the Order shall apply.

Retained apparatus: protection of National Grid

7.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 5(2) (removal of apparatus) the undertaker must submit to National Grid a plan and seek from National Grid details of the apparatus belonging to or maintained by National Grid.

(2) The plan to be submitted under sub-paragraph (1) must show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) shall be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2)—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (1), (2) or (3) apply until National Grid has given written approval of the plan so submitted,

(5) Any approval of National Grid required under sub-paragraph (1), (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6)46 or (8);
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraphs (1), (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (5), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the undertakers' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1), (2), (3) or (5) (except in an emergency)

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 6 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(10) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall

- (a) comply with sub-paragraph (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

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

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 5 sub-paragraph (3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;

- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 31 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

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

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

Indemnity

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

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

- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

Insurance

10.—(1) The undertaker shall not commence construction (and not permit the commencement of such construction) of the authorised works on any land either owned by National Grid or in respect of which National Grid has an easement or wayleave for apparatus or any other interest or to carry out any works within 15 metres of any apparatus unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker (such confirmation not to be unreasonably withheld or delayed).

(2) In the event of the undertaker's failure to comply with sub-paragraph (1) of this Schedule National Grid shall be entitled to seek injunctive relief (or any other equitable remedy) in any court of competent jurisdiction and the undertaker irrevocably and unconditionally waives any right of objection in relation to National Grid's right to seek injunctive relief or any other equitable remedy.

Enactments and agreements

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

Co-operation

12. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party's operations.

Access

13. If in consequence of the agreement reached in accordance with paragraph 4(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 31 (arbitration) of the Order.

FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG

1. The provisions in this Schedule have effect for the protection of DCC, unless otherwise agreed in writing between the undertaker and DCC.

2.—(1) In this Schedule—

“acceptable insurance” means a policy of public liability or third party liability insurance effected and maintained by the undertaker and available in the market on commercially reasonable terms having regard, amongst other matters, to premiums required and the policy terms obtainable, with a level of insurance cover to be agreed between the undertaker and DCC, during the construction of the works pursuant to this Order with a reputable insurer;

“accessories” has the same meaning as that set out in section 219 of the Water Industry Act 1991(a) but also includes any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;

“DCC apparatus” means all apparatus or accessories vested in or belonging to DCC for the purpose of carrying on its statutory undertaking including reservoirs, water treatment works and waste water treatment works;

“clearance area” means the area of land—

- (a) within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;
- (b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is 300mm in diameter or more; or
- (c) within 10 metres either side of the centre line of a gravity sewer;

“DCC” means Dŵr Cymru Cyfyngedig, a limited company registered in Wales under Company No. 2366777 and having its registered office at Pentwyn Road, Nelson, Treharris, Mid Glamorgan CF46 6LY or its properly authorised agents or sub-contractors;

“draft specification” means a detailed plan, cross-section and description of the works to be prepared by the undertaker (including, without limitation, a method statement and risk assessment setting out the intention in respect of the works, construction methods and programmes, position of the affected DCC apparatus and intended works and a statement that to the best of the undertaker’s knowledge, and having used all reasonable care and skill to plan the works, the works will not cause damage to the DCC apparatus);

“functions” has the same meaning as in section 219 of the Water Industry Act 1991 and includes powers and duties;

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

“sustainable drainage system” means any structure designed to receive rainwater and other surface water which structure includes any feature or aspect of design that is intended to receive or facilitate the receipt of rainwater except a public sewer or a natural watercourse; and

“works” means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are near to, or will or may in any way affect any DCC apparatus together with all ancillary actions relating hereto.

(2) For the avoidance of doubt, all other terms are as defined in article 2 of this Order.

(a) 1991 c.56.

3.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Schedule.

(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DCC's rights to access DCC apparatus or accessories but subject always to paragraphs 7 and 8 of this Schedule and to the undertaker giving DCC 28 days' notice of such interference.

Precedence of the Water Industry Act 1991

4.—(1) Regardless of any provision of this Order and this Schedule the undertaker must comply fully with all provisions of the Water Industry Act 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus and nothing in this Order releases the undertaker from the requirement to comply with the provisions of the Water Industry Act 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus, including without limitation—

- (a) sections 41 to 44 in respect of water main requisitions;
- (b) section 45 in respect of any connections to a water main;
- (c) sections 98 to 101 in respect of sewer requisitions;
- (d) section 102 in respect of the adoption of sewers and disposal works;
- (e) section 104 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;
- (f) sections 106 to 109 (inclusive) in respect of any connections to public sewers;
- (g) section 111 in respect of the restrictions on use of public sewers;
- (h) sections 158 and 159 in respect of statutory rights of access to DCC apparatus;
- (i) section 174 in respect of offences of interference with works etc;
- (j) section 178 in respect of obstruction of sewerage works etc;
- (k) section 185 in respect of the removal, diversion or alteration of DCC apparatus.

(2) The arbitration provisions at article 31 of this Order do not apply where DCC uses a warrant of entry in accordance with the provisions of the Water Industry Act 1991.

Protection of DCC apparatus

5.—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DCC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 4(1)(k), the undertaker must submit to DCC written notice together with a draft specification.

(2) DCC must examine the draft specification submitted under sub-paragraph (1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph (2) must be repeated where those amendments are not accepted). For the avoidance of doubt, DCC's proposed amendments may include such reasonable requirements for the alteration (including but not limited to the extension) of DCC apparatus or otherwise for the protection of DCC apparatus, or for securing access to it.

(3) Once approved under sub-paragraph (2), the draft specification becomes the specification and the works must be executed only in accordance with the specification and such reasonable requirements as may be made in accordance with sub paragraph (2) and DCC is entitled to watch and inspect the execution of those works.

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

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency provided it has complied with paragraph 8 below, except that the undertaker must comply with sub-paragraphs (1) and (3) in so far as is reasonably practicable in the circumstances.

(6) DCC may opt to carry out any temporary or protective works specified under sub-paragraph (2) to DCC apparatus, and if DCC opts to do so it must—

- (a) agree the scope and timings of the works with the undertaker (and the undertaker must not unreasonably withhold or delay its agreement to the same);
- (b) provide an invoice together with supporting evidence of the estimated costs of the works on the basis of which it must agree with undertaker the reasonable costs of the works to be met by the undertaker;
- (c) following agreement and payment of the costs, DCC must as soon as reasonably practicable carry out and complete the works; and
- (d) notify the undertaker immediately in writing upon completion of the temporary or protective works.

(7) Only those contractors that satisfy DCC's reasonable health and safety requirements are permitted to make openings into or connections with or carry out any works on or within any public sewer or drain vested in DCC unless otherwise agreed with DCC.

(8) Only DCC is permitted to make openings into or connections with or carry out any works on or within any public water main vested in DCC unless otherwise agreed with DCC.

(9) Where DCC apparatus will be affected by the works the undertaker must determine the exact location of DCC apparatus prior to any works being carried out by the undertaker and the undertaker should contact DCC where trial holes are required.

(10) Any affected DCC apparatus which is no longer required by DCC but is not removed must be transferred to the undertaker by way of a deed of transfer from DCC at the undertaker's expense and on such terms as DCC reasonably requires.

Suspension of works

6.—(1) DCC is entitled to instruct the undertaker to suspend the works if in DCC's reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DCC apparatus or are likely to cause or result in damage to any DCC apparatus or have caused or are likely to cause damage to the environment arising as a result of damage to DCC apparatus.

(2) In the event of such instruction being given by DCC—

- (a) the undertaker must procure that it and its contractor(s) and subcontractor(s) immediately suspend or cease the works having due regard to health and safety factors and must discuss and agree with DCC the remedial actions required prior to resuming the works;
- (b) the undertaker and DCC must act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
- (c) DCC shall submit to the undertaker within 3 days following the issue of an instruction under sub-paragraph (1), a written notice specifying the reasons for requiring the works to be suspended;
- (d) in the event that DCC fails to supply the written notice mentioned in sub-paragraph (c) within 5 days of an instruction issued under sub-paragraph (1) DCC's instruction to suspend the works is void and the undertaker is entitled to recommence the works; and
- (e) DCC must commence, carry out and complete any remedial works pursuant agreed under this sub-paragraph, as soon as reasonably practicable and DCC must give the undertaker

notice immediately upon completion of such remedial works and on receipt of such notice the undertaker is entitled to resume the works.

(3) DCC is entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 6.

Co-operation

7.—(1) If either the undertaker or DCC (for the purpose of this paragraph 7 “the party” or together “the parties”) wishes to take any action which would impact on the ability of the undertaker to carry out the authorised development or DCC to carry out its statutory functions, the parties must use reasonable endeavours to co-operate with one another in order to align work streams so to minimise or avoid disruption to the other party’s works. In respect of the references to ‘work’ and ‘works’ in this sub-paragraph (1), to the extent that this refers to ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 2 of this Schedule does not apply.

(2) Subject to paragraph 8, differences or disputes arising between the undertaker and DCC under this Schedule must, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 31 (arbitration) of the Order.

Emergency works

8.—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works. For the avoidance of doubt, in the event that DCC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 10 applies.

(2) DCC is at all times permitted to carry out any emergency works in relation to its DCC apparatus within the order limits in accordance with Part II Schedule 6 of the Water Industry Act 1991.

(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph (2) take precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker must reschedule its works accordingly.

(4) In respect of the references to ‘work’ and ‘works’ in this paragraph 8, to the extent that this is ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 2 of this Schedule does not apply.

Insurance

9. The undertaker must not commence any works under paragraph 5(1) to this Schedule unless and until the undertaker has procured acceptable insurance.

Damage to DCC apparatus

10.—(1) Subject to sub-paragraphs (3), (4), (5) and (6), the undertaker indemnifies and hold harmless DCC against all claims demands costs damages expenses penalties and losses which DCC may have or sustain or become liable for in consequence of works under paragraph 5(1) to this Schedule in respect of—

- (a) the commencement, carrying out, execution or retention of the works or any breach of this Schedule relating to the performance of the works and must pay compensation for loss, damage or injury caused by the actions or default of the undertaker, its contractors, subcontractors, licencees, agents and invitees relating to the performance of the works; and
- (b) damage to the environment caused by the undertaker during any works including but not limited to pollution or contamination; and
- (c) any breach of any stipulation or otherwise of any deeds of grant (or any renewal of any of the deeds of grant made on substantially the same terms provided that DCC has supplied the undertaker with a copy of the new document) arising from the works.

(2) Subject to sub-paragraphs (3), (4), (5) and (6), the undertaker must bear and pay the costs reasonably incurred by DCC in making good damage to DCC apparatus or restoring an interruption in the supply provided by DCC.

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

(4) DCC must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker.

(5) Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and DCC in respect of any DCC apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

(6) DCC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 10 applies. If requested to do so by the undertaker, DCC must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 10 for claims reasonably incurred by DCC.

FOR THE PROTECTION OF ASSOCIATED BRITISH PORTS

1.—(1) In this Schedule—

“AB Ports” means Associated British Ports in its capacity as the owner, operator and harbour authority for the Port of Port Talbot;

“the dock” means the main inner dock at the Port of Port Talbot;

“the safety critical level” means +4.45 metres above ordnance datum Newlyn; and

“the warning level” means +4.95 metres above ordnance datum Newlyn.

(2) The provisions of this Schedule have effect for the protection of AB Ports unless otherwise agreed in writing between the undertaker and AB Ports.

2.—(1) If the water level within the dock reaches the warning level, the undertaker must notify AB Ports as soon as reasonably practicable.

(2) Following receipt of a notification under sub-paragraph (1), the undertaker and AB Ports must liaise with each other to agree the measures to be taken to ensure that the water level in the dock does not fall below the safety critical level.

(3) In agreeing any measures under sub-paragraph (2) the undertaker and AB Ports must have regard to—

- (a) the operational requirements of the undertaker and AB Ports;
- (b) the statutory functions and obligations of AB Ports as harbour authority for the Port of Port Talbot;
- (c) other causes of loss of water from the dock including leakage from the lock gates and sluices, seepage, and abstraction by third parties; and
- (d) the likely effects of the short term weather forecast on the water level within the dock.

(4) If the undertaker reasonably anticipates that, despite any measures agreed under sub-paragraph (2), the water level in the dock could fall below the safety critical level, the undertaker must impound water for as long as is necessary to ensure the water level in the dock does not fall below the safety critical level.

(5) During any period in which the undertaker is required to impound water under sub-paragraph (4), the undertaker and AB Ports must consult and co-operate with each other to the extent reasonably required to minimise the extent and duration of the impoundment and any disruption to the parties’ respective undertakings.

3. The undertaker must, on a monthly basis from commencement of the operation of the authorised development, provide to AB Ports records of the volumes of water abstracted from the River Afan (dock feeder channel) and the dock for the purpose of the authorised development and the Port Talbot Steelworks.

4. Differences arising between the undertaker and AB Ports under this Schedule must, unless otherwise agreed in writing between the undertaker and AB Ports, be determined by arbitration in accordance with article 31 (arbitration) of the Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Tata Steel UK Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas-fired power station, a 66kV switchgear station building, an electrical cables connection and other related infrastructure on the site of the Port Talbot steelworks. The Order would permit the undertaker to acquire, compulsorily or by agreement; rights over certain land for the purposes of the development authorised by the Order.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 28 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at [**].