

**2019 No. 1268**

**INFRASTRUCTURE PLANNING**

**The Abergelli Power Gas Fired Generating Station Order 2019**

*Made* - - - - - *19th September 2019*

*Coming into force* - - - - - *10th October 2019*

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

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

The Secretary of State, has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(d) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application.

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

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

## PART 1 PRELIMINARY

### **Citation and commencement**

**1.** This Order may be cited as the Abergelli Power Gas Fired Generating Station Order 2019 and comes into force on 10th October 2019.

### **Interpretation**

**2.—(1)** In this Order—

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

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- (a) 2008 c.29. The relevant provisions of the 2008 Act are amended by Chapter 6 of Part 6 of, and schedule 13 to, the Localism Act 2011 (c.20), sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), section 43 of the Wales Act 2017 (c.4) and paragraph 12(2) of Schedule 1 to S.I. 2013/124. Transitional provisions are contained in section 70 of and Schedule 7 paragraphs 1 and 6 to, the Wales Act 2017 and in S.I. 2013/1124.
  - (b) S.I. 2010/103, amended by S.I. 2012/635.
  - (c) Section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of section 25(20) to the Localism Act 2011 (c.20).
  - (d) S.I. 2009/2263. Regulation 3 was amended by S.I. 2012/635 and S.I. 2012/787. S.I. 2009/2263 was revoked by S.I. 2017/572, but continues to apply to this application for development consent by virtue of transitional provisions contained in regulation 37(2) of that instrument.
  - (e) Section 127 was amended by sections 23(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013 (c.27) and by paragraph 64(2) of Schedule 13(1).
  - (f) 1961 c.33. Section 1 was amended by paragraphs 37(a) and (b) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; sections 2 and 3 were repealed by paragraph 38 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 4 was amended by paragraphs 39(a), (b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307. The application of section 5A is modified by paragraph 7 of Schedule 8 to this Order. There are other amendments to the 1961 Act which are not relevant to this Order.

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

- (a) 1965 c.56. Section 1 was amended by part 1 of Schedule 6 and paragraph 14(2) of Schedule 4 to the Acquisition of Land Act 1981, section 4 of and paragraph 13(1)(a) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11), and paragraph 1 of Schedule 10 to the Courts Act 2003, (c.39); sections 2, 7, 9, 14, 21, 22, 24, 26, 28 and 30, paragraph 2 of Schedule 2 and paragraphs 2(3) and 7(2) of Schedule 4 were amended by section 9(3) and paragraph 5 of Schedule 3 to the Gas Act 1986 (c.44), section 245(4) of the Town and Country Planning Act 1990 (c.8), section 151(5) of and paragraph 2(1) of Schedule 18 to the Water Act 1989 (c.15), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 (c.57), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 30(1) of the Acquisition of Land Act 1981 (c.67) and section 129 of the Local Government Act 1972 (c.70), sections 39 and 40 and paragraphs 11(1) to Schedule 5 Part III and paragraph 1 to Schedule 4 of the Forestry Act 1967 (c.10), section 49(7)(i) of the Agriculture Act 1967 (c.22), section 15 of the Greater London Council (General Powers) Act 1967 (c.xx), and section 60(1) of the Post Office Act 1969 (c.48), sections 120(3), 124(2) and 273(1) of the Local Government Act 1972 (c.70), article 4 of S.I. 1978/829, article 3 of S.I. 1978/1125 and Part I of Schedule 6 to the New Towns Act 1981 (c.64), with section 129 words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 (c.62); sections 2, 7, 9, 14, 21, 22, 26, 28 and 32 were amended by sections 120(3), 124(2), and 273(1) of the Local Government Act 1972 (c.70), article 4 of S.I. 1978/829, article 3 of S.I. 1978/1125, Schedule 6 Part I of the New Towns Act 1981 (c.64), sections 6, 37(4)(5), 38, and paragraphs 2(2) and 15(9) of Schedule 2 and paragraphs 3(1), 5(1) and 8 of Schedule 5 to the Channel Tunnel Act 1987 (c.53), sections 2(2), and paragraph 1 of Schedule 2 Part II and paragraph 1(8) of Schedule 3 to the Dartford–Thurrock Crossing Act 1988 (c.20), section 10(1) and paragraph 6 of Schedule 3 Part I to the Electricity Act 1989 (c.29), sections 151(5), 151(6), 155(3) to (7) of and paragraphs 2(2)(3) to (8) of Schedule 18 and paragraphs 6(1)(a)(c) of Schedule 20 to the Water Act 1989 (c.15), section 10(1) of and paragraphs 7 to 13 of Schedule 3 Part I to the Electricity Act 1989 (c.29), and extended by paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 (c.12); section 3 was amended by paragraph 3 of Schedule 15(1) to the Planning and Compensation Act 1991 (c.34); section 4 was amended by section 182(1) of the Housing and Planning Act 2016 (c.22); section 4A was inserted by s202(1) of the Housing and Planning Act 2016 (c.22); section 5 was amended by section 67 Part III of the Planning and Compensation Act 1991 (c.34), section 192(2) Part 7 of the Housing and Planning Act 2016 (c.22) and paragraph 60 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 6 was amended by paragraph 61 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 7 was also extended by section 237(4)(a) of the Town and Country Planning Act 1990 (c.8), and by section 78(2)(a), and paragraph 5(4) of Schedule 10 Part II to the Housing Act 1988 (c.50); section 8 was amended by paragraphs 62(b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraph 2 of Schedule 17(1) to the Housing and Planning Act 2016 (c.22); section 9 was also amended by section 1(1) of and Schedule 1 to the Statute Law (Repeals) Act 1973 (c.39), section 52(10)(a) of the Land Compensation Act 1973 (c.26), section 13(3) and paragraphs 4 and 5 to Schedule 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), section 146(10) of the Town and Country Planning Act (c.8) and by section 54(7) of the Land Compensation Act (c.26); section 10 was amended by paragraph 63 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraphs 13(2)(a) and (b) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11); section 11 was amended by section 186(2), section 187(2), section 188 and paragraph 6 of Schedule 14 to the Housing and Planning Act 2016 (c.22), paragraphs 14(3)(a) and (b) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1, and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 11A was added by section 186(3) of the Housing and Planning Act 2016 (c.22); section 11B was added by section 187(3) of the Housing and Planning Act 2016 (c.22); section 12(6) was amended by paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c.22); section 13 was amended by section 139 (5) to (9), paragraph 28(2) of Schedule 13 and paragraph 1 of Schedule 23(3) to the Tribunals, Courts and Enforcement Act 2007 (c.15); section 15 was amended by paragraph 65 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 16 was amended by paragraph 66 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 17 was amended by paragraph 67 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 18 was amended by paragraph 68 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 19 was amended by paragraph 69 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 20 was amended by paragraph 4 of Schedule 15(I) to the Planning and Compensation Act 1991 (c.34) and paragraph 70 of Schedule 1 to the Transfer of Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 22 was also modified by section 13(3) of and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), and excluded by section 10(3) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66); section 23 was amended by paragraph 4(1) of Schedule 11(2) to the Constitutional Reform Act 2005 c.4; section 24 was also amended by section 17(2)(3) and Schedule 2 to the Rentcharges Act 1977 (c.30); section 25 was amended by paragraph 4(1) of Schedule 11(2) to the Constitutional Reform Act 2005 (c.4), and s1(1) and Part IX of Schedule 1 to the Statute Law (Repeals) Act (c.39); Section 26 was also amended by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34); section 27 was repealed by article 3 and Schedule 1 to S.I. 1990/776; section 29 was repealed by paragraph 1 of Schedule 23(3) to the Courts and Enforcement Act 2007 (c.15); section 30 was also amended by section 34(1) and paragraph 14(4) of Schedule 4 to the Acquisition of Land Act 1981 (c.67); section 31 was amended by section 34(1) and paragraph 14(5) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 19(b) of Schedule 15(II) to the Planning and Compensation Act 1991 (c.34) and paragraph 12(2) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1; Section 32 was also amended by section 34(1), and paragraph 14(6) of Schedule 4 to the Acquisition of Land Act 1981 (c.67); Paragraph 10 of Schedule 1 was amended by Schedule 9(3), Schedule 3 Part II paragraph 5 of the Gas Act 1986 (c.44), sections 10 and 14(4) of the Land Commission Act 1967 (c.1), section 28(4) and Schedule 3 paragraph 3 of the Courts Act 1971 (c.23), sections 47(6) and 52(2) of the Highways Act 1971 (c.41), section 10(1) and Schedule 3 paragraphs 6 to 13 of the Electricity Act 1989 (c.29), section 78(2)(b) and Schedule 10 Part III paragraph 20–23 of the Housing Act 1988 (c.50), section 578 of the Housing Act 1985 (c.68), section 37(4) of the Land Drainage Act 1976 (c.70), sections 6(2),(4),(6),(7) and 27, Schedule 4 Part II and Schedule 7 paragraph 5(5) of the Development of Rural Wales Act 1976 (c.75), article 4 of S.I. 1978/268, section 250 and Schedule 19 of the Highways Act

- “the 1980 Act” means the Highways Act 1980(a);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(b);
- “the 1986 Act” means the Gas Act 1986(c)
- “the 1989 Act” means the Electricity Act 1989(d)
- “the 1990 Act” means the Town and Country Planning Act 1990(e);
- “the 1991 Act” means the New Roads and Street Works Act 1991(f);

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1980 (c.66), section 245(4) of the Town and Country Planning Act 1990 (c.8), section 151(5) and Schedule 18 paragraph 2(1) with sections 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4) to (10), 190, 193(1), Schedule 26 paragraphs 3(1)(2), 17, 40(4), 57(6), 58) of the Water Act 1989 (c.15), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 (c.57), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 30(1) of the Acquisition of Land Act 1981 (c.67), and section 129 of the Local Government Act 1972 (c.70) Words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 (c.62) and modified by section 13(3) and Schedule 3 paragraphs 4 and 5 of Agriculture (Miscellaneous Provisions) Act 1968 (c.34); paragraph 2 of Schedule 2 was modified by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), section 10(2) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), paragraph 14 of Schedule 3A to the Town and Country Planning Act 1968 (c.72) and Schedule 2, Appendix A to the Land Commission (Dissolution) Act 1971 (c.18); paragraph 13 of Schedule 2A was amended by paragraph 3 of Schedule 17(1) of the Housing and Planning Act 2016 (c.22). There are other amendments to the 1965 Act which are not relevant to this Order.

- (a) 1980 c.66. Section 328 was amended by sections 27, 28 and 54 of , and paragraphs 1(2) of Part I and 2 of Part III of Schedule 2 to the Town and Country Planning Act 1990 (c.8), by sections 3 and 19 of, and paragraph 9 of Schedule 3 to, the Dartford–Thurrock Crossing Act 1988 (c.20), s35, and by paragraphs 7(1) and 10(1) of Schedule 4 to the Channel Tunnel Act 1987 (c.53), and extended by sections 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4) to (10), 190, 193(1) of, and paragraph 1(2)(xxv)(8) of Schedule 25 and paragraphs 3(1)(2), 17, 40(4), 57(6), and 58 of Schedule 26 to, the Water Act 1989 (c.15), and by section 112(1)(3) of, and paragraph 2(4)(d)(6)(9) of Schedule 16, paragraphs 33 and 35(1) of Schedule 17 to, the Electricity Act 1989 (c.29), and by section 67(1)(3) of, and paragraph 2(1)(xl) of Schedule 7 and paragraph 33 of Schedule 8 to, the Gas Act 1986 (c.44). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1984 c.27.
- (c) 1986 c.44. Relevant amendments are as follows: a new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by sections 3(2) and 76(3) and 76(4) of and paragraph 4 of Schedule 6(I) and paragraph 1 of schedule 8 to the Utilities Act 2000 (c.27), regulation 18(2), (3), (4) and (5) of the Electricity and Gas (Internal Markets) Regulations 2011/2704 and section 149(5) of the Energy Act 2004 (c.20); section 48 was amended by paragraph 1 of Schedule 6 to the Gas Act 1995 (c.45).
- (d) 1989 c.29. Relevant amendments are as follows: section 6 was amended by section 30 of the Utilities Act 2000 (c.27), sections 89(3), 136(1), 136(2), 145(5), 145(6), and 145(7), and paragraph 5 of Schedule 19 and paragraph 1 of Schedule 23(1) to the Energy Act 2004 (c.20), articles 6(2)(a), 6(2)(b), 6(3), 6(4) of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012/2400, regulation 19 of the Electricity and Gas (Internal Markets) Regulations 2011/2704, and by paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c.27); section 64 was amended by the Utilities Act 2000 (c.27) Schedule 6, paragraph 38(3);
- (e) 1990 c.8. Section 106 was amended by section 12(1) of the Planning and Compensation Act 1991 (c.34), paragraphs 3(2) and 3(3) of Schedule 2 to the Growth and Infrastructure Act 2013 (c.27), section 33 of the Greater London Authority Act 2007 (c.24), and by section 174(2)(a) to (c) of the Planning Act 2008 (c.29); section 153(4) was inserted by section 200 of the Housing and Planning Act 2016 (c.22); section 264 was amended by paragraph 54 of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60), paragraph 9 of Schedule 3(1) to the British Waterways Board (Transfer of Functions) Order 2012/1659, paragraph 14 of Schedule 1(1) to the Transport for London (Consequential Provisions) Order 2003/1615, paragraphs 20(a) and 20(b) of Schedule 12 to the Localism Act 2011 (c.20), paragraph 18 of Schedule 4(2) to the Infrastructure Act 2015 (c.7), and by paragraph 13(a)(i) of Schedule 1(III) to the Transport Act 2000 (Consequential Amendments) Order 2001/4050. There are other amendments to the 1990 Act which are not relevant to this order.
- (f) 1991 c.22. Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26); section 49 was amended by paragraphs 117(a) and 117(b) of Schedule 1(2) to the Infrastructure Act 2015 (c.7); section 50 was amended by section 124(3) of the Local Transport Act 2008 (c.26); section 51 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 54 was amended by the transitional provisions specified in article 6(1) to (3) and (5) of SI 2007/3174 and by section 49(1) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 55 was amended by section 51(9) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18), and subject to transitional provisions specified in article 6(4) and (5) of SI 2007/3174 by section 49(2) of the Traffic Management Act 2004 (c.18); section 56 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18), and wording was amended subject to transitional provisions specified in article 5 of SI 2007/3174 by section 43 of the Traffic Management Act 2004 (c.18); section 56A was inserted subject to transitional provisions specified in article 4 of SI 2007/1890 and article 5 of SI 2007/3174 by section 44 of the Traffic Management Act 2004 (c.18); section 57 was amended by section 52(3) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 58 was amended subject to transitional provisions specified in article 7 of SI 2007/3174 and article 6 of SI 2007/1890 by section 51 of the Traffic Management Act 2004 (c.18) and amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 58A was inserted subject to transitional provisions specified in article 7 in SI 2007/1890 and article 8 in 2007/3174 by section 52(1) of the Traffic Management Act 2004 (c.18); section 59 was amended by section 42 of Traffic Management Act 2004 (c.18); section 60 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 63 was amended by paragraph 118 of Schedule 1(2) to the Infrastructure Act 2015 (c.7); section 64 was amended by section 52(4) of the Traffic Management Act 2004 (c.18) and by paragraph 12 of Schedule 7 to the Road Traffic Act 1991 (c.40); section 65 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 66 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 67 was amended

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

“Abergelli Power Limited” means Abergelli Power Limited (Company No. 8190497) whose registered office is at Drax Power Station, Drax, Selby, United Kingdom, YO8 8PH;

“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;

“authorised development” means the development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

“book of reference” means the book of reference with submission document reference number 4.3 and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commence” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including investigations necessary for the discharge of requirements 14 (site investigation), 15 (mineral resources survey) and 16 (peat management plan)) receipt and erection of construction plant and equipment, erection of any temporary means of enclosure associated with and for the duration of the other works excluded from this definition of commence, the

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by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 68 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 69 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 70 was amended subject to transitional provisions specified in article 9 in SI 2007/3174 by section 54 of the Traffic Management Act 2004 (c.18) by section 40(3) of that same Act; section 71 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 74 was amended by sections 256(2), (3)(a), (3)(b), (4), (5), (6) and (7) of the Transport Act 2000 (c.38), sections 40(4) and 52(5) of the Traffic Management Act 2004 (c.18) and by paragraph 119 of Schedule 1(2) to the Infrastructure Act 2005 (c.7); section 74A was amended by section 255(1) of the Transport Act 2000 (c.38), section 40(4) of the Traffic Management Act 2004 (c.18) and by paragraphs 120(2) and 120(3) of Schedule 1(2) to the Infrastructure Act 2015 (c.7); section 74B was amended by section 255(1) of the Transport Act 2000 (c.38); Section 79 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 83 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 86 was added by paragraph 121 of Schedule 1(2) to the Infrastructure Act 2015 (c.7); section 88 was amended by sections 52(6) and 40(5) of the Traffic Management Act 2004 (c.18); section 89 was amended by section 52(7) of the Traffic Management Act 2004 (c.18) and by paragraph 57(1) of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60); section 92 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 93 was amended by section 49(3) of the Traffic Management Act 2004 (c.18); section 95A was inserted subject to transitional provisions specified in article 3 of SI 2007/1890 and article 3 of SI 2007/3174 by section 41(1) of the Traffic Management Act 2004 (c.18); section 106 was amended by section 41(2) of the Traffic Management Act 2004 (c.18) and by paragraph 122 of Schedule 1(2) of the Infrastructure Act 2015 (c.7). There are other amendments to the 1991 Act which are not relevant to this Order.

- (a) 2008 c.29. Section 14 was amended by article 2(2) of the Infrastructure Planning (Waste Water Transfer and Storage) Order 2012/1645 and by articles 2(2)(a) and 2(2)(b) of the Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015/949; section 74 was amended by Localism Act 2011 (c.20) Schedule 25(20) paragraph 1 and Schedule 13(1) paragraph 29(3) of the Localism Act 2011 (c.20); section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of section 25(20) to the Localism Act 2011; section 103 was amended by paragraph 48(4) of Schedule 13(1) and paragraph 1 of Schedule 25(20) to the Localism Act 2011; Section 104 was amended by paragraphs 49(2),(3)(a),(3)(b), (3)(c), (4), (5)(a), (5)(b), (6) and (7) of Schedule 13(1) to the Localism Act 2011, and by section 58(5) of the Marine and Coastal Access Act 2009 (c.23); section 114 was amended by paragraphs 55(2)(a), (2)(b) and (3) of Schedule 13(1) to the Localism Act 2011; section 115 was amended by paragraph 1 of Schedule 25(20) to the Localism Act 2011, section 160(2) to (6) of the Housing and Planning Act 2016 (c.22) and section 160(3) and (4) of the Wales Act 2017 (c.4); section 120 was amended by section 140 and paragraph 60(2) and (3) of Schedule 13(1) to the Localism Act 2011; section 122 was amended by paragraph 62 of Schedule 13(1) to the Localism Act 2011; section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016 (c.22); Section 127 was amended by section 23(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013, (c.27) and by paragraph 64(2) of Schedule 13(1) to the Localism Act 2011; section 134 was amended by section 142(2)(a) and (3) and paragraph 1 of Schedule 25(21) to the Localism Act 2011 and paragraphs 6(1)(a) and 6(1)(b) of Schedule 1 to the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017/16; section 138 was amended by section 23(4)(a) to (c) of the Growth of Infrastructure Act 2013 (c.27); section 152 was amended by paragraph 293 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 161 was amended by paragraph 4(3) of Schedule 8(1) to the Marine and Coastal Access Act 2009 (c.23) and by paragraphs 41(3)(a) and 41(3)(b) of Schedule 4(1) to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664.

temporary display of site notices or advertisements and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of testing all systems and components of the authorised development (which are installed or in relation to which installation is near complete) in order to ensure that they, and the authorised development as a whole, functions in accordance with the plant design specifications and the undertaker’s operational and safety requirements;

“date of completion of construction” means the date on which the construction of the authorised development is complete including rectification of any construction defects, landscaping and reinstatement works;

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

“design principles statement” means the design principles statement with submission document reference number 10.2 and certified as such by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

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

“environmental statement” means the environmental statement submitted with submission document reference numbers 6.1, 6.2, 6.3, 6.4.0 and which is certified as such by the Secretary of State for the purposes of this Order;

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

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

“flood consequences assessment” means the flood consequences assessment contained in appendix 9.1 of the environmental statement and certified as the flood consequences assessment by the Secretary of State for the purposes of this Order;

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

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

“hedgerow plan” means the hedgerow plan with submission document reference 2.9 and which is certified as the hedgerow plan by the Secretary of State for the purposes of this Order;

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

“land plans” means the plans with submission document reference number 2.2 and which are certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means in respect of numbered works 1, 2 and 3 the outer limits of the corresponding numbered area shown on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development but only insofar as such activities are unlikely to give rise to any materially new or different environmental effects from those assessed in the environmental statement and for the avoidance of doubt “maintain” shall not entitle the undertaker to remove or reconstruct the whole of work no. 1, and “maintenance” and “maintaining” are to be construed accordingly;

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(a) S.I. 2016/1154.



“National Grid” has the definition set out in paragraph 18 of Schedule 11 to this Order;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans and described in the book of reference;

“Order limits” means the limits shown on the works plans;

“outline construction environment management plan” means the outline construction environment management plan revision 2 which is certified as the outline construction environmental management plan by the Secretary of State for the purposes of this Order;

“outline construction staff travel plan” means the outline construction staff travel plan contained in appendix 3.3b of the environment statement and which is certified as the outline construction staff travel plan by the Secretary of State for the purposes of this Order;

“outline construction traffic management plan” means the outline construction traffic management plan contained in appendix 3.3a of the environmental statement and which is certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order;

“outline drainage strategy” means the outline drainage strategy revision 1 which is certified as the outline drainage strategy by the Secretary of State for the purposes of this Order;

“outline landscape and ecological mitigation strategy” means the outline landscape and ecological mitigation strategy revision 4 which is certified as the outline landscape and ecological mitigation strategy by the Secretary of State for the purposes of this Order;

“outline lighting strategy” means the outline lighting strategy contained in appendix 3.5 of the environmental statement and which is certified as the outline lighting strategy by the Secretary of State for the purposes of this Order;

“outline surface water management plan” means the outline surface water management plan in appendix 3.2 of the environmental statement and which is certified as the outline surface water management plan by the Secretary of State for the purposes of this Order;

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

“relevant planning authority” means the City and County of Swansea Council in relation to land in its area;

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

“rights of way, streets and access plan” means the plan with submission document reference number 2.4 revision 1 and which is certified as the rights of way, streets and access plan by the Secretary of State for the purposes of this Order;

“shut down period” means the period set out in requirement 23 during which construction workers may return to the site office to return safety and other equipment, attend debrief sessions, change clothing and prepare to leave site but during which period no plant or machinery may be operated other than site maintenance machinery and plant such as generators, wheel washes and road sweepers;

“start-up period” means the period set out in requirement 23 during which construction workers may arrive at site, sign in, don personal protective equipment, attend safety and other briefings and mobilise on site but during which no plant or machinery may be operated;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and includes a public communications provider as defined by the Communications Act 2003(b);

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- (a) 1981. c.67. Section 7 was amended by paragraph 9 of Schedule 15(I) to the Planning and Compensation Act 1991 (c.34). Paragraph 3 in Part III of Schedule 2 was amended by Schedule 1 to S.I. 2009/1307. There are other amendments to section 7 which are not relevant to this Order.
- (b) 2003 c.21. Section 106 was amended by section 4, subsections (4) to (9) of the Digital Economy Act 2017 (c.30); section 151(1) was amended by Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations (S.I. 2011/1210), and Schedule 3A was inserted by paragraph 1 of Schedule 1 to the Digital Economy Act 2017 and regulations 3 and 4 of S.I. 2017/1008.

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

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in the 1984 Act;

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

“undertaker” means Abergelli Power Limited or the person who for the time being has the benefit of this Order in accordance with articles 6 and 7 of this Order;

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

“works plans” means sheet 1 of 2 and sheet 2 of 2 of the plans with submission document reference number 2.3 and which are 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 airspace above its surface and references in this Order to the imposition of restrictions are references to restrictive covenants over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order (save for the parameters set out in Table 2 of Schedule 2) are approximate and distances between lines or points on a numbered work comprised in the authorised development and shown on the works plan and rights of way, streets and access plan are to be taken to be measured along that work.

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

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

(6) A reference to numbered work 1 means 1A to 1F (inclusive) and a reference to numbered work 5 means 5A and 5B comprising part of the authorised development as numbered in Schedule 1 (authorised development).

(7) References in this Order to points identified by letters or numbers are to be construed as points so lettered or numbered on the rights of way, streets and access plan.

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

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

## PART 2

### PRINCIPAL POWERS

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

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

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

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

#### **Maintenance of authorised development**

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

(2) This article only authorises the carrying out of maintenance works within the Order limits.

### **Operation of authorised development**

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

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

### **Benefit of this Order**

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

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

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

(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or

(b) 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 which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be so agreed in writing by the undertaker and lessee.

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

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

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

(a) the transferee or lessee is the holder of a licence under section 6 of the 1989 Act or section 7 of the 1986 Act; or

(b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claims that have been made have all been compromised or withdrawn;

(iii) compensation has been paid in final settlement of all such claims;

(iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

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

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

(a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;

- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

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

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

(9) The undertaker must also send a copy of the notice given under paragraph (6) to the relevant planning authority.

## PART 3 STREETS

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

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

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order land and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Street works**

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

- (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 and keep apparatus in the street;
- (d) maintain apparatus in the street or change its position or remove it;
- (e) carry out all necessary works required for the execution of the works required under article 8 (power to alter layout etc. of streets) including removal and relocation or reinstatement of drainage, fence lines and signage and pruning or removal of vegetation to improve visibility; and

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

(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) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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

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

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

(3) Those restoration works carried out pursuant to article 8(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(4) Those restoration works carried out pursuant to article 8(3) identified in Part 4 of Schedule 5 which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

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

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

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

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

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

**11.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order land as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets specified in columns (1) and (2) of Schedule 6 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) Any person who suffers loss by the temporary alteration, diversion, prohibition or restriction under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Stopping up of streets**

**12.**—(1) The undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 7 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way, streets and access plan, in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 7 (being a street to be stopped up) shall be wholly or partially stopped up under this article unless any of the conditions specified in paragraph (3) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(3) The conditions referred to in paragraph (2) are that—

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

(4) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is stopped up under paragraph (1).

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

(6) This article is subject to article 31 (apparatus and rights of statutory undertakers in streets).

### **Access to works**

**13.** The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 3 (streets subject to permanent and temporary alteration of layout);
- (b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 3 (streets subject to permanent and temporary alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order land as the undertaker reasonably requires for the purposes of the authorised development.

#### **Agreements with street authorities**

**14.—**(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order; or
- (e) the carrying out in the street of any of the works referred to in article 10(1) (construction and maintenance of new or altered means of access).

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

#### **Traffic Regulation**

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

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of subparagraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 11 or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(a).

(4) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

(5) If the traffic authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**16.—**(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 land, 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(b) (right to communicate with public sewers).

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) 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.

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

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

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

(b) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2) to (5) and 36(2) of the Water Act 2003 (c.37).



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

### **Authority to survey and investigate the land**

**17.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order land or on any land 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;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; 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 on entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

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

(5) The 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, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

## **PART 5**

### **POWERS OF ACQUISITION**

#### **Compulsory acquisition of land**

**18.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) This article is subject to article 22 (compulsory acquisition of rights etc.), article 25 (acquisition of subsoil only) and article 28 (temporary use of land in connection with carrying out the authorised development).

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

### **Compulsory acquisition of land – incorporation of the mineral code**

19. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

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

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

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.

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

(4) Subsection (2) of section 10 of the 1965 Act 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 must be applied to the construction of paragraph (2) (with any necessary modifications).

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

21.—(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 is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(a) as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 28 (temporary use of land in connection with carrying out the authorised development) must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights etc.**

22.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 188 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

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(a) 1981 c.66. Section 4 was amended by sections 184, 185 and paragraph 2 of Schedule 18(1) to, the Housing and Planning Act 2016 (c.22). There are further amendments to that Act made by the Housing and Planning Act 2016 that are relevant to the amendment of section 4.

(2) In respect of such parts of the Order land that are edged in red and shaded blue on the land plans the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights and impose the restrictions described in the book of reference and shown on the land plans.

(3) Subject to section 8 of the 1965 Act (provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) (as substituted by paragraph 9 of Schedule 8 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictions)), where the undertaker creates or acquires a right over land or imposes a restriction under paragraph (1) or (2), the undertaker is not to be required to acquire a greater interest in that land.

(4) Schedule 8 is to have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restriction.

(5) In any case where the acquisition of new rights or the imposition of a restriction under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictions to the statutory undertaker in question.

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

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

### **Private rights**

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

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

whichever is the earliest.

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

- (a) as from the date of acquisition of the right 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 in pursuance of the right,

whichever is the earliest.

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

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

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

(6) 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 30 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land,

(ii) the undertaker's appropriation of it,

(iii) the undertaker's entry onto it, or

(iv) the undertaker's taking temporary possession of it,

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

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

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

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

**24.—**(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 applied by paragraph (1), has effect with the following modifications.

(3) In section 5(2) (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.

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

(5) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order) the three year period mentioned in section 5A” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 2019.”.

(6) In section 6 (notices after execution of declaration), in subsection 1(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

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

(8) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute “(2) But see article 25(3) (acquisition of subsoil only) of the Abergelli Power Gas Fired Generating Station Order 2019, which excludes the acquisition of subsoil only from this Schedule”.

(9) 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 (and as

modified by article 26 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

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

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Modification of Part 1 of the Compulsory Purchase Act 1965**

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

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

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 211 (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 2019”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 211 (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 2019”.

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

- (a) for paragraphs 1(2) and 14(2) substitute in both places—  
“(2) But see article 25(3) (acquisition of subsoil only) of the Abergelli Power Gas Fired Generating Station Order 2019, which excludes the acquisition of subsoil only from this Schedule.”; and
- (b) after paragraph 29, insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 28 (temporary use of land in connection with carrying out the authorised development) or article 29 (temporary use of land for maintaining the authorised development) of the Abergelli Power Gas Fired Generating Station Order 2019.”.

#### **Rights under or over streets**

**27.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order land as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

#### **Temporary use of land in connection with the carrying out of the authorised development**

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

- (a) enter on and take possession of—
  - (i) so much of the land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 9 (land of which temporary possession may be taken), or any other mitigation works.

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of construction of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of construction of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article.

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

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

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

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

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in part 1 of the book of reference under article 22 (compulsory acquisition of rights etc.); or
- (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 25 (acquisition of subsoil only) or article 27 (rights under or over streets).

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

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

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9 (land of which temporary possession may be taken).

(13) The provisions of the Neighbourhood Planning Act 2017(a) do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development necessary for the authorised development within the Order land.

### **Temporary use of land for maintaining the authorised development**

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(a) 2017 c.20.

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

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

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

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

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

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

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

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

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

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

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

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

(11) In this article, “the maintenance period” means the period of 5 years beginning with the date of final commissioning except where the authorised development is landscaping where “the maintenance period” means such period as set out in the landscaping plan which is approved by the relevant planning authority pursuant to requirement 3 beginning with the date on which that part of the landscaping is completed.

(12) The provisions of the Neighbourhood Planning Act 2017(a) do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the authorised development and other development necessary for the authorised development within the Order land.

### **Statutory undertakers**

**30.** Subject to the provisions of Schedule 11 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;

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(a) 2017 c.20.



- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to statutory undertakers on, under, over or within the Order land; and
- (c) create and acquire compulsorily the rights or impose restrictions over any Order land belonging to statutory undertakers.

### **Apparatus and rights of statutory undertakers in streets**

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

### **Recovery of costs of new connections**

**32.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 300 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 30, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

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

(3) This article does not have effect in relation to apparatus to which article 3131 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

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

### **Funding**

**33.—**(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security and the amount of that security for that purpose has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land.

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 20 (statutory right to override easements);

- (c) article 22 (compulsory acquisition of rights etc.);
- (d) article 25 (private rights);
- (e) article 25 (acquisition of subsoil only);
- (f) article 27 (rights under or over streets);
- (g) article 28 (temporary use of land in connection with the carrying out of the authorised development);
- (h) article 29 (temporary use of land for maintaining the authorised development); and
- (i) article 30 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

## PART 6

### OPERATIONS

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

**34.**—(1) The undertaker may, subject to paragraph (3), fell or lop any tree or shrub within or overhanging land within the Order land or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

(2) The undertaker may, for the purposes of the authorised development and subject to paragraph (3), remove any hedgerows within the Order land and specified in Schedule 10 (removal of hedgerows).

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

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

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

## PART 7

### MISCELLANEOUS AND GENERAL

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

**35.**—(1) This article applies to—

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(a) S.I. 1997/1160.

- (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 prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies 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 the purposes of the 1990 Act**

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

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

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

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(b);
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of

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(a) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

(b) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3), paragraphs 33 and 35 of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the 1989 Act; section 61 was amended by section 133(2) and Schedule 7 to the Building Act 1984 (c.55), Schedule 24 to the Environment Act 1995 (c.25), and section 162(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.

premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protective provisions**

**38.** Schedule 11 (protective provisions) has effect.

### **Certification of plans etc.**

**39.—**(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) design principles statement;
- (c) the environmental statement, which includes within its appendices the following—
  - (i) outline construction environment management plan;
  - (ii) outline landscape and ecological mitigation strategy;
  - (iii) outline surface water management plan;
  - (iv) flood consequences assessment;
  - (v) outline drainage strategy;
  - (vi) outline construction traffic management plan;
  - (vii) outline construction staff travel plan;
  - (viii) outline lighting strategy;
- (d) the land plans;
- (e) the rights of way, streets and access plan; and
- (f) the works plans; and
- (g) hedgerow plan,

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

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

### **Service of notices**

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

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

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

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(a)</sup> 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—

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

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body, and
  - (b) in any other case, the last known address of that person at that time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
  - (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—
- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
  - (b) the notice or document is capable of being accessed by the recipient;
  - (c) the notice or document is legible in all material respects; and
  - (d) in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.

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

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

(2) Any consent, agreement or approval given under paragraph (1) above may be given subject to conditions.

(3) Schedule 12 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements in Schedule 2 (requirements).

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

(5) The procedure set out in paragraph 3 of Schedule 12 has effect in relation to any refusal by an authority or an owner as referred to in paragraph (1) of this article to any consent, agreement or approval required under this Order, as if such a refusal were in respect of an application to discharge a requirement.

(6) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the relevant article of this Order under which consent is sought, the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

### **Arbitration**

**42.** 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 Secretary of State.

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

**43.** Regulation 6 of the Hedgerows Regulations 1997 is to be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“or

- (k) to the extent specified in and for the purpose of carrying out development which has been authorised by an order granting development consent made pursuant to the Planning Act 2008.”.

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

*Gareth Leigh*

Head of Energy Infrastructure and Planning

Department for Business, Energy and Industrial Strategy

19th September 2019

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

In the City and County of Swansea—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, consisting of a generating station with a gross rated electrical output of up to 299 Megawatts comprising all or any of the work numbers in this schedule or any part of any work number in this schedule—

**Work No. 1A** development comprising—

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

**Work No. 1B** development comprising—

- (a) a control room/office/workshop,
- (b) telemetry apparatus and cabling,
- (c) above ground raw water and fire water storage tanks and associated infrastructure,
- (d) fire-fighting equipment, buildings and distribution pipework,
- (e) a demineralised water storage tank,
- (f) an emergency generator including fuel storage tank,
- (g) attenuation pond(s) and connection to drain system,
- (h) chemical storage facilities, other minor infrastructure and auxiliaries/services,
- (i) pipework, pipe runs and pipe racks, and
- (j) cathodic protection test/transformer rectifier unit;

**Work No. 1C** development comprising—

- (a) an on-site natural gas receiving station and gas treatment compound containing—
  - (i) a pipeline inspection gauge (PIG) receiving facility,
  - (ii) isolation valves, metering, heating, filtering, compression, pressure regulation equipment,
  - (iii) electricity supply kiosks,
  - (iv) emergency generator including fuel storage tank,
  - (v) Joule-Thomson boiler(s), and
  - (vi) control and instrumentation kiosks; and
- (b) gas pipelines and telemetry cabling and cathodic protection test/ transformer rectifier unit;

**Work No. 1D** development comprising a transformer compound including generator step up transformer, unit transformers, bus bar connections and other plant and structures required to manage the transmission of electricity;

**Work No. 1E** development comprising—

- (a) security infrastructure, including cameras, perimeter fencing and a gatehouse,
- (b) site lighting infrastructure, including perimeter lighting columns,
- (c) internal roadways, car parking, pedestrian network, cycle parking, hardstanding and water treatment trailers,

- (d) a maintenance compound including hardstanding and welfare and administration facilities,
- (e) site drainage and waste management infrastructure, including relocation of existing site drainage as required,
- (f) electricity, water, wastewater and telecommunications and other services including high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling,
- (g) landscaping including tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation, and
- (h) other ancillary equipment;

**Work No. 1F** development comprising hardstanding area for maintenance laydown and welfare and administration facilities;

**Work No. 2** development comprising a new permanent means of access from the B4489 to numbered work 1 including structure over water main and decommissioned oil pipeline, permanent road surface and kerb stones, safety barrier(s), signing and road markings, drainage works (including culverts), tree, hedge and fence removal and installation of new signing, gates and fencing, telecommunications connections and other services, temporary car parking and temporary construction compound and other incidental works;

**Work No. 3** development comprising a temporary construction laydown area including areas of hardstanding and site and welfare offices and workshop, and infrastructure to enable plant and vehicle crossings of existing underground utilities;

**Work No. 4** development comprising landscaping and ecological mitigation area including tree planting and ecological enhancement and boundary fencing;

**Work No. 5A** development comprising earthworks and ground raising in connection with Work No. 1;

**Work No. 5B** development comprising earthworks in connection with Work No. 2;

and such other buildings, structures, works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1 but only within the Order limits and insofar as they will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.



## SCHEDULE 2 REQUIREMENTS

Article 3

### Time limits

1. The authorised development must commence no later than the expiration of five years beginning with the date this Order comes into force.

### Detailed Design

2.—(1) The authorised development must be carried out in accordance with the approved plans, inclusive of any limits of deviation, bearing the references listed below and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any requirement (as the same may be amended by approval of the relevant planning authority pursuant to requirement 29(1))—

**Table 1**

Works plans	Submission document reference number 2.3
Rights of way, streets and access plan	Submission document reference number 2.4

(2) The authorised development must be carried out within the parameters specified in Table 2 and Table 3 (as the same may be amended by approval of the relevant planning authority pursuant to requirement 29(1))—

**Table 2**

<i>Building or structure</i>	<i>Maximum height (metres above 90 metres above ordnance datum)</i>	<i>Minimum height (metres above 90 metres above ordnance datum)</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>
The gas turbine generator (including gas turbine, generator, air inlet filter house, air inlet duct, exhaust diffuser, and auxiliaries such as lube oil system, air dryers, fuel gas filter package, instrument air system, compressor washing) (Part of numbered work 1A)	27	–	50	40
The exhaust gas emission flue stack (part of numbered work 1A)	45	35	–	12
Control room/office/ workshop (part of numbered work 1B)	7	–	45	25
Emergency generator (part of numbered work 1B)	6	–	13	5
Natural gas receiving station (including compression station, emergency generator, Joule–Thompson boilers and other auxiliary	10	–	70	50

<i>Building or structure</i>	<i>Maximum height (metres above 90 metres above ordnance datum)</i>	<i>Minimum height (metres above 90 metres above ordnance datum)</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>
control cabinets) (part of numbered work 1C)				
Gatehouse (part of numbered work 1E)	4.5	–	9	8
Demineralised water tank (part of numbered work 1B)	7	–	7	7
Fire water tank (part of numbered work 1B)	15	–	15	15
Pipeline inspection gauge facility (part of numbered work 1C)	3	–	35	35
Fin Fan Coolers (part of numbered work 1A)	10		28	14
Transformer compound (including generator step up transformer, unit and other transformers, connection to underground cable and associated equipment) (part of numbered work 1D)	15	–	65	60

**Table 3**

<i>Structure</i>	<i>Maximum width (metres)</i>	<i>Maximum length (metres)</i>	<i>Maximum height (metres above 85 metres above ordnance datum)</i>	<i>Minimum height (metres above 85 metres above ordnance datum)</i>	<i>Maximum height (metres above the top of the road structure)</i>
Road structure over water main, decommissioned oil pipeline (part of numbered work 2)	12	60	5	1	–
Safety barrier (related to the road structure identified above, and part of numbered work 2)	–	–	–	–	1.2

(3) No part of numbered work 5 may commence until details and sections of the proposed site levels for the relevant part of numbered work 5 have been submitted to and approved in writing by the relevant planning authority.

(4) No part of numbered work 1 may commence until, for the relevant part of numbered work 1, details of the layout, scale and external appearance of the numbered work have been submitted to and approved in writing by the relevant planning authority.

(5) Work numbered 1 must be designed substantially in accordance with the relevant design principles contained within the design principles statement.

(6) No part of numbered work 2 which is within 25 metres either side of the centre line of the 66 inch water main may commence until details of the structure for crossing the water main have been submitted to and approved in writing by the relevant planning authority in consultation with Dŵr Cymru Cyfyngedig.

### **Provision and maintenance of landscaping**

**3.**—(1) Numbered works 1, 2 and 4 of the authorised development must not commence until, for that numbered work, a written landscaping plan (including an implementation timetable) has been submitted to and approved in writing by the relevant planning authority. The landscaping plan must be substantially in accordance with the landscaping mitigation proposals set out in the outline landscape and ecological mitigation strategy, and include details of all proposed hard and soft landscaping works.

(2) All landscaping works must be carried out in accordance with the landscaping plan approved under this requirement 3 and to a reasonable standard in accordance with any relevant recommendations of any appropriate British Standard(s) or other recognised codes of good practice set out in the outline landscape and ecological mitigation strategy.

(3) All landscaping works and restoration must be carried out in accordance with the implementation timetable approved in the landscaping plan.

(4) Any tree or shrub planted as part of the approved landscaping plan 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 in writing by the relevant planning authority.

(5) The landscaping plan must be reviewed by the undertaker and a landscaping plan with any updates required as a result of the review must be submitted to the local planning authority for written approval every five years for the operational life of the authorised development to ensure that the management and maintenance objectives set out in the outline landscape and ecological mitigation strategy are being met. The updated landscaping plan must be implemented in accordance with the approved details.

### **Highway accesses**

**4.**—(1) Numbered work 2 of the authorised development must not commence until, for that numbered work, details of the design, layout and (where not already identified in Schedule 3 and the rights of way, streets and access plan) siting of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic has been submitted to and approved in writing by the relevant planning authority (in consultation with the highway authority).

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

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

**5.**—(1) Each of numbered works 1 to 5 of the authorised development may not commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure for that numbered work (or for numbered work 5, the relevant part of numbered work 5) have been submitted to and approved in writing by the relevant planning authority.

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

(3) Any temporary fencing must be removed by the end of three months beginning with the date of completion of construction of the authorised development.

(4) Any permanent fencing for numbered works 2, 3 and 4 must enable badgers, otters and water voles to be able to pass through or under the relevant fencing.

(5) The details approved pursuant to this requirement must be implemented.

### **Surface and foul water drainage**

6.—(1) Numbered works 1, 2, 3 and 5 of the authorised development must not commence until, for that numbered work, a written surface and foul water drainage plan (including details of any watercourse crossings, means of pollution control and proposals for management and maintenance) has been submitted to and approved in writing by the relevant planning authority. The surface and foul water drainage plan must be substantially in accordance with the principles set out in the outline drainage strategy.

(2) The surface and foul water drainage plan must be implemented in accordance with the approved details, prior to final commissioning.

### **Surface water management plan**

7.—(1) Numbered works 1, 2, 3 and 5 of the authorised development must not commence until, for that numbered work, a written surface water management plan has been submitted and approved in writing by the relevant planning authority. The surface water management plan must be in substantial accordance with the principles set out in the outline surface water management plan.

(2) The surface water management plan must be implemented in accordance with the approved details.

### **Pre-construction ecological constraints survey**

8.—(1) Numbered works 3, 4 and 5 of the authorised development must not commence until for that numbered work pre-construction ecological constraints surveys have been undertaken to confirm the presence or absence of badger setts, otters or water voles in the relevant part of the site prior to the commencement of construction of that numbered work.

(2) The pre-construction ecological constraints survey reports must be submitted to and approved by the relevant planning authority, in consultation with Natural Resources Wales. Survey reports may be submitted and approved separately for each relevant species.

(3) In the event that the pre-construction ecological constraints survey reports record the presence of badger setts, otters or water voles on the relevant part of the site, the report must set out any mitigation measures required.

(4) All mitigation proposed in the pre-construction ecological constraints survey reports must be implemented in accordance with the approved details prior to construction of the relevant work.

(5) A numbered work may not commence if any of the approved surveys (badger setts, otters or water voles) for that numbered work are, taken from the date of the survey, more than 2 years old at the date of commencement of that numbered work.

(6) In the event that any survey for a numbered work that has not commenced is more than 2 years old, the relevant pre-construction surveys must be repeated and sub-paragraphs (2) to (5) above apply to such repeated surveys.

### **Ecological management plan**

9.—(1) No numbered work of the authorised development may commence until a written ecological management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority. The ecological management plan must be in substantial accordance with the ecological mitigation proposals set out in the outline landscape and ecological

mitigation strategy save to the extent that modifications are necessary to reflect the findings of any pre-construction ecological constraints surveys.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved in accordance with the approved implementation timetable.

(3) The ecological management plan must be reviewed by the undertaker and an ecological management plan with any updates required as a result of the review must be submitted to the local planning authority for approval every five years for the operational life of the authorised development to ensure that the management and maintenance objectives set out in the landscape and ecological mitigation strategy are being met. The updated ecological management plan must be implemented in accordance with the approved details.

### **Invasive species survey and remediation**

**10.**—(1) Each of the numbered works of the authorised development must not commence until an invasive species survey covering the relevant part of the site for that numbered work affected by the relevant work has been undertaken and (where any invasive non-native species are found to be present) a protocol, including an associated management, maintenance and monitoring scheme, has been submitted to and approved in writing by the relevant planning authority. The protocol must detail the containment, control and removal of any species on the relevant part of the site and must be substantially in accordance with the recommendations set out in Appendix F of the outline landscape and ecological mitigation strategy.

(2) The survey report and any other relevant protocols must include the relevant qualifications and experience of the person carrying it out and the person who will supervise the relevant works.

(3) Numbered works 3, 4 and 5 must not commence unless, for that numbered work, all the measures set out in the approved protocol have been carried out in accordance with the approved protocol.

### **Bat Method Statement**

**11.**—(1) Numbered works 3, 4 and 5 of the authorised development must not commence until pre-construction checks substantially in accordance with those outlined in Appendix C of the outline landscape and ecological mitigation strategy have been undertaken on trees and hedgerows with potential suitability for supporting roosting bats.

(2) Where any trees and hedgerows proposed for removal are found to support roosting bats works for the removal of such trees or hedgerows must not be undertaken until a bat method statement outlining additional mitigation measures to avoid impacts on roosting bats has been submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales.

(3) The authorised development must be carried out in accordance with the approved Bat Method Statement.

(4) If construction of the relevant work has not commenced within 2 years of the completion of the pre-construction checks, the pre-construction checks must be repeated and sub-paragraphs (2) and (3) above apply in relation to any repeat pre-construction checks.

### **Reptile Method Statement**

**12.**—(1) Each of numbered works 3, 4 and 5 of the authorised development must not commence until for that numbered work a reptile method statement detailing the location and specification of fencing, timing and methodology for the management of reptiles (which must be substantially in accordance with the measures set out in Appendix A of the outline landscape and ecological mitigation strategy) has been submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales.

(2) Numbered works 3, 4 and 5 must not commence until for that relevant numbered work all measures specified in the approved reptile method statement have been completed.

(3) The reptile method statement must include the relevant qualifications and experience of the person who drafted the statement, as well as the relevant qualifications and experience of the people who are to carry out and supervise the relevant works for the management of reptiles.

### **Archaeology**

**13.**—(1) Numbered works 3 and 5 of the authorised development must not commence until a written scheme for the investigation of areas of archaeological interest covering that numbered work in accordance with the Standard and Guidance of the Chartered Institute for Archaeologists has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, preserve or record any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a registered organisation or an accredited MCIfA level Member accredited by the Chartered Institute for Archaeologists.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme unless otherwise agreed in writing with the relevant planning authority.

(5) A copy of the watching brief report must be submitted to the relevant planning authority within two months of the archaeological fieldwork being completed. In the event that archaeological assets are discovered during the watching brief, a programme for preparation and submission of an interpretative report must be agreed with the relevant planning authority and an interpretative report submitted to the relevant planning authority in accordance with the agreed programme.

### **Site investigation**

**14.**—(1) Numbered works 3 and 5 of the authorised development must not commence until a site investigation report informed by intrusive ground conditions survey covering an assessment of the geotechnical and geo-environmental properties of the substrata for the relevant land has been submitted to and approved in writing by the relevant planning authority.

(2) Where identified as necessary by the site investigation report, the relevant part of numbered works 3 and 5 of the authorised development must not commence until a mining risk assessment or foundation risk assessment has been submitted to and approved in writing by the relevant planning authority.

(3) The reports must include the relevant qualifications and experience of the person carrying them out and be sufficient to establish if any ground precautions are necessary in relation to the design and construction of numbered works 3 and 5 in order to minimise any risk of damage which might arise as a result of ground conditions.

(4) A remediation method statement must be submitted, if required, and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales.

(5) Numbered works 3 and 5 must be carried out in accordance with the measures set out in the approved remediation method statements.

### **Mineral Resources Survey**

**15.**—(1) Where the site investigation report identifies the presence of minerals, numbered work 5 of the authorised development must not commence until a minerals resources survey report covering that numbered work has been submitted to and approved in writing by the relevant planning authority.

(2) The undertaker must have regard to the approved mineral resources survey report when preparing the decommissioning strategy required under requirement 28 (Decommissioning Strategy).

### **Peat Management Plan**

**16.**—(1) Where the site investigation report carried out in accordance with requirement 14 confirms the presence of peat affecting relevant parts of numbered work 5, affected parts of numbered work 5 must not commence until a peat management plan covering the affected parts has been submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales.

(2) All construction works must be undertaken in accordance with the approved peat management plan.

### **Construction environment management plan**

**17.**—(1) No part of numbered works 1, 2, 3 or 4 of the authorised development may commence until a construction environment management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales. The construction environment management plan must be substantially in accordance with the outline construction environmental management plan and must include the following—

- (a) community liaison;
- (b) complaints procedures;
- (c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise, vibration and lighting);
- (d) dust management measures;
- (e) site waste and materials management measures;
- (f) pollution control measures;
- (g) security measures and use of artificial lighting;
- (h) a protocol in the event that unexpected contaminated land is identified during ground investigation or construction;
- (i) any protocols agreed under Requirement 10 in relation to management of invasive non-native species;
- (j) details of plant and machinery that may be operated outside the working hours set out in requirement 23; and
- (k) details of out of hours working procedures.

(2) All construction works must be undertaken in accordance with the approved construction environment management plan and protocols contained therein.

### **Dust management plan**

**18.**—(1) Numbered work 5 of the authorised development must not commence until a dust management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales. The dust management plan must be substantially in accordance with the contents outlined in the outline construction environmental management plan and must include details of a complaints procedure.

(2) All construction works must be undertaken in accordance with the approved dust management plan.

### **Pollution prevention management plan**

**19.**—(1) Numbered work 5 of the authorised development must not commence until a pollution prevention management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales. The pollution prevention management plan must be substantially in accordance with the contents outlined in the outline construction environmental management plan and must include details of a

complaints procedure and details of any artificial lighting proposed during construction of numbered work 5.

(2) All construction works must be undertaken in accordance with the approved pollution prevention management plan.

### **Waste and material management plan**

**20.**—(1) Numbered work 5 of the authorised development must not commence until a waste and material management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales. The waste and material management plan must be substantially in accordance with the contents outlined in the outline construction environmental management plan and must include details of a complaints procedure.

(2) All construction works must be undertaken in accordance with the approved waste and material management plan.

### **Construction traffic management plan**

**21.**—(1) No numbered work of the authorised development other than tree felling may commence until a construction traffic management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority in consultation with Welsh Government Transport and the Highways Authority. The construction traffic management plan must be substantially in accordance with the outline construction traffic management plan and is to include—

- (a) construction vehicle routing plans at an appropriate scale for all traffic including abnormal indivisible loads showing—
  - (i) swept path analysis from the point of entry onto the highway network to the Order land;
  - (ii) highway mitigation in respect of any identified constraints on vehicle movements such as embargo periods, route traffic sensitivity, temporary road works and other highway restrictions to be developed following consultation with the South Wales Trunk Road Agent, and, where relevant, referring to supporting HD19/03 safety audit documentation (as contained within the Design Manual for Roads and Bridges Volume 5 Section 2 Part 2 and as amended or replaced); and
  - (iii) land ownership boundaries for any required holding areas, passing areas and layover areas;
- (b) site access plans at an appropriate scale that include supporting HD19/03 safety audit documentation (as contained within the Design Manual for Roads and Bridges Volume 5 Section 2 Part 2 and as amended or replaced);
- (c) proposals for the management of junctions to and crossings of the public highway during delivery of abnormal indivisible loads;
- (d) proposals for the scheduling and timing of movements of delivery vehicles, to be developed following consultation with the Welsh Government Transport and potentially affected undertakers, and, in relation to any abnormal indivisible loads, details of vehicle parameters, number of vehicles in convoy size, dimensions (width, length, height) and weight (total vehicle with load and axel loading);
- (e) details of escorts for abnormal indivisible loads highlighting where and when along the route private vehicles, banksman and police vehicles escorts will be used (including emergency contingencies);
- (f) proposals for temporary warning signs and banksman for abnormal indivisible loads, including provision of plan drawings and associated traffic signs schedule highlighting locations along the route where temporary traffic management (including cones and temporary signs) needs to be deployed;



- (g) a methodology for undertaking a conditions survey of roads from point of entry onto the trunk road network to the Order land that may have a constraining impact on the abnormal indivisible load movements including the timescales for undertaking the surveys and the methods of reporting the findings to the relevant planning authority, comprehensive photographs and potential compensation arrangements;
- (h) details of any temporary or permanent improvements to highways;
- (i) proposals for management of any affected public rights of way during construction of the authorised development;
- (j) proposals for the making good of any incidental damage to highways by construction traffic associated with the authorised development including street furniture, structures, drainage features, highway verge and carriageway surfaces;
- (k) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during any of the activities, operations or works set out in Schedules 3, 4, 5 or 6; and
- (l) proposals for the notification of occupiers of land adjacent to the construction traffic route of the scheduling and timing of abnormal indivisible load movements from the point of exit from the trunk road network to the Order land.

(2) The construction traffic management plan must be implemented as approved for the entire duration of the construction period for that numbered work.

(3) During the operation or decommissioning of numbered work 1 no abnormal indivisible loads must be transported into or out of the Order land without the prior written approval of the relevant planning authority in consultation with Welsh Government Transport.

### **Construction staff travel plan**

**22.**—(1) The authorised development must not commence until a travel plan for construction workers has been submitted to and approved by the relevant planning authority. The travel plan must be substantially in accordance with the outline construction staff travel plan.

(2) The travel plan must be carried out as approved during construction of the authorised development.

### **Construction hours**

**23.**—(1) No construction work, or the delivery or removal of materials for construction work, must take place outside the hours of—

- (a) 0800 and 1800 hours on weekdays (excluding public holidays); and
- (b) 0800 and 1300 hours on Saturdays or on public holidays.

(2) Sub-paragraph (1) does not prevent construction works, or the delivery or removal of materials, being carried out outside the hours set out in sub-paragraph (1) with the prior written approval of the relevant planning authority and does not apply to commissioning works required in advance of the date of final commissioning.

(3) Nothing in sub-paragraph (1) precludes a start-up period from 0730 to 0800 and a shut down period from 1800 to 1830 on weekdays (excluding public holidays) and a start-up period from 0730 to 0800 and a shut down period from 1300 to 1330 on a Saturday.

(4) In this paragraph, “public holiday” means Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a).

### **Dates of final commissioning, completion of construction and cessation**

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(a) 1971 c.80. This Act has been amended on several occasions but none of the amendments are relevant.

24.—(1) The undertaker must notify the relevant planning authority in writing of the date of final commissioning as soon as reasonably practicable and in any event within three months after the occurrence of that date.

(2) The undertaker must notify the relevant planning authority in writing of the date of completion of construction as soon as reasonably practicable and in any event within three months after the occurrence of that date.

(3) The undertaker must notify the relevant planning authority in writing of the date the authorised development permanently ceases to generate power on a commercial basis as soon as reasonably practicable and in any event within three months after the occurrence of that date.

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

25.—(1) Following the date of final commissioning, site-attributable noise arising from the operation of numbered work 1 must be limited at all times of day to the noise levels set out in column A of Table 3 measured at the coordinates set out in column B of Table 3—

**Table 4**

<i>A</i>			<i>B</i>	<i>B</i>
Daytime Noise Limit BS 4142:2014 rating level (dB LAR)	Night Time Noise Limit BS 4142:2014 rating level (dB LAR)	Location	Coordinates X	Coordinates Y
45	39	Cefn-betingau	266046	201482
41	40	Maes-Eglwys	265438	200654
48	43	Lletty'r Morfil Farm	264747	201105
45	41	Abergelli Farm	265125	201643

(2) Noise measurements at or in close proximity to each of the identified locations must be undertaken in accordance with British Standard 7445 and submitted by the undertaker to the relevant planning authority within a three month period beginning with the date of final commissioning, including details of any remedial works and a programme for implementation should noise levels exceed the level specified in Table 3 above.

(3) Any remedial works must be carried out in accordance with the approved programme for implementation and the noise measurements must be repeated and submitted to the relevant planning authority for approval following completion of remedial works to demonstrate that the noise levels are within the limits set out in Table 3 above.

#### **Control of artificial light emissions during operation**

26.—(1) Numbered work 1 of the authorised development must not enter commercial operation until a written scheme for the management and mitigation of artificial light emissions has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales. The scheme must be substantially in accordance with the outline lighting strategy.

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

#### **Operation of the authorised development**

27.—(1) In any calendar year the gas turbine generators comprised in numbered work 1A shall not operate in excess of 2,250 hours in total.

(2) In any rolling five year period the gas turbine generators comprised in numbered work 1A shall not operate in excess of an average of 1,500 hours per calendar year.

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

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

### **Decommissioning strategy**

**28.**—(1) A scheme for the demolition and removal of all parts of numbered work 1 situated above ground along with a proposed implementation timetable for decommissioning works must be submitted to the relevant planning authority by no later than—

- (a) twenty four months of the Order land ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis); or
- (b) if sooner, upon the undertaker having removed apparatus forming part of Work No. 1D from the site, such that further use of the land for energy generation is unlikely.

(2) The decommissioning strategy must include the following—

- (a) community liaison;
- (b) complaints procedures;
- (c) nuisance management (including measures to avoid or minimise the impacts of decommissioning works (covering dust, noise, vibration and lighting));
- (d) dust management measures;
- (e) site waste and materials management measures;
- (f) pollution control measures;
- (g) security measures and use of artificial lighting; and
- (h) a list of additional consents required for decommissioning activities and a programme for the intended submission of relevant consent applications.

(3) Subject to obtaining the necessary consents, the demolition and removal of numbered work 1 must be implemented in accordance with the approved scheme and the approved implementation timetable.

(4) The undertaker must apply for any additional consents required for decommissioning activities in accordance with the programme approved by the relevant planning authority.

### **Amendments to approved details**

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

(2) Approval under sub-paragraph (1) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought will not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

SCHEDULE 3

Article 8

STREETS SUBJECT TO PERMANENT AND TEMPORARY  
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

Table 5

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
City and County of Swansea	Rhyd-y-pandy road	Creation of new access from Rhyd-y-pandy road including lowering the levels of the kerb and formation of new junction/bellmouth <b>between the points marked C and D</b> on the rights of way, streets and access plan.
City and County of Swansea	Footpath LC35A	Alteration/construction of new style/access to footpath between the <b>points marked E and F</b> on the rights of way, streets and access plan.
City and County of Swansea	Private road/track (unnamed)	Construction over/removal of street (comprising part of numbered work 1) between the <b>points marked K and L</b> on the rights of way, streets and access plan.
City and County of Swansea	Private track (unnamed) running south-east from Abergelli farm (known as “the gallops”)	Construction of crossing over private track (comprising part of numbered work 2) <b>between the points marked K and M</b> on the rights of way, streets and access plan.
City and County of Swansea	Private track (unnamed) running south-east from Abergelli farm (known as “the gallops”)	Removal of street (comprising part of numbered work 1) <b>between the points marked M and N</b> on the rights of way, streets and access plan.
City and County of Swansea	Public footpath LC32	Creation of new access road (comprising part of numbered work 2) between the <b>points marked P and Q</b> on the rights of way, streets and access plan.

<i>(1)</i> Area	<i>(2)</i> Street subject to alteration of layout	<i>(3)</i> Description of alteration
City and County of Swansea	Private access road (unnamed) from B4489 to Swansea North substation and Felindre gas compressor station	Creation of new access road (comprising part of numbered work 2) including the laying of new road surface and drainage works <b>between points marked T and O</b> on the rights of way, streets and access plan.
City and County of Swansea	Private access road (unnamed) from B4489 to Swansea North substation and Felindre gas compressor station	Modification and widening of existing access (comprising part of numbered work 2) including widening of existing road surface and drainage works <b>between the points marked W and T</b> on the rights of way, streets and access plan.
City and County of Swansea	B4489/Private access road (unnamed) from B4489 to Swansea North substation and Felindre gas compressor station	Widening of existing junction visibility splay at B4489 (comprising part of work numbered 2) <b>between the points marked X and Y</b> on the rights of way, streets and access plan.

## PART 2

### TEMPORARY ALTERATION OF LAYOUT

**Table 6**

<i>(1)</i> Area	<i>(2)</i> Street subject to alteration of layout	<i>(3)</i> Description of alteration
City and County of Swansea	Rhyd-y-pandy road	Creation of temporary construction access including the lowering of levels of the kerb and formation of junction/bellmouth <b>between the points marked C and D</b> on the rights of way, streets and access plan.
City and County of Swansea	Footpath LC35A	Alteration/construction of new style/access to footpath <b>between the points marked E and F</b> on the rights of way, streets and access plan.

<i>(1)</i> Area	<i>(2)</i> Street subject to alteration of layout	<i>(3)</i> Description of alteration
City and County of Swansea	Private road/track (unnamed)	Creation of crossing point(s) for temporary construction access within the Order land during construction <b>between the points marked G and H</b> on the rights of way, streets and access plan.
City and County of Swansea	Footpath LC35B	Creation of crossing point(s) for temporary construction access within the Order land during construction <b>between the points marked G and H</b> on the rights of way, streets and access plan.
City and County of Swansea	Private road/track (unnamed)	Creation of crossing point(s) for temporary construction access within the Order land during construction <b>between the points marked G and I</b> on the rights of way, streets and access plan.
City and County of Swansea	Private track running south-east from Abergelli farm (known as “the gallops”)	Creation of temporary construction compound (comprising part of work numbered 3) <b>between the points marked J and M</b> on the rights of way, streets and access plan.
City and County of Swansea	Public Footpath LC32	Creation of crossing point for temporary construction access (comprising part of numbered work 2) between the <b>points marked P and Q</b> on the rights of way, streets and access plan.
City and County of Swansea	B4489/Private access road (unnamed) from B4489 to Swansea North substation and Felindre gas compressor station	Temporary widening of existing junction visibility splays from B4489 <b>between points marked X and Y</b> on the rights of way, streets and access plan to provide access to works numbered 1 and 2.

SCHEDULE 4

Article 9

STREETS SUBJECT TO STREET WORKS

Table 7

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Street Works</i>	<i>(3)</i> <i>Description of the street works</i>
City and County of Swansea	Rhyd-y-pandy road	Works to enable the creation of a temporary construction access between the <b>points marked C and D</b> on the rights of way, streets and access plan.
City and County of Swansea	Rhyd-y-pandy road	Works to enable the creation of a new permanent access between the <b>points marked C and D</b> on the rights of way, streets and access plan.
City and County of Swansea	Public Footpath LC35A	Works between the <b>points marked E and F</b> of the rights of way, streets and access plan to enable the creation of a new permanent access.
City and County of Swansea	Public Footpath LC35B	Works for the installation and maintenance of a gas pipeline and crossing points for temporary internal road within the Order land <b>between the points marked G and H</b> on the rights of way, streets and access plan.
City and County of Swansea	Private road/track (unnamed) running north-east from Abergelli farm to Rhyd-y-pandy road	Works for the installation and maintenance of a gas pipeline and crossing points for temporary internal road within the Order land <b>between the points marked G and H</b> on the rights of way, streets and access plan.
City and County of Swansea	Private road/track (unnamed)	Works for the installation and maintenance of a gas pipeline and crossing points for temporary internal road within the Order land <b>between the points marked G and I</b> on the rights of way, streets and access plan.
City and County of Swansea	Private track running south-east from Abergelli farm (known as “the gallops”)	Works for numbered work 3 to be constructed <b>between the points marked J and M</b> on the rights of way, streets and access plan.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Street Works</i>	<i>(3)</i> <i>Description of the street works</i>
City and County of Swansea	Private track running south–east from Abergelli farm (known as “the gallops”)	Works for the construction and maintenance of numbered work 2 between the <b>points marked K and M</b> on the rights of way, streets and access plan.
City and County of Swansea	Private road/track (unnamed)	Works for the removal of street (comprising part of numbered work 1) <b>between the points marked K and L</b> on the rights of way, streets and access plan.
City and County of Swansea	Public Footpath LC117	Works in the street comprising numbered work 2 and the installation and maintenance of an electrical cable <b>between the points marked P and Q</b> on the rights of way, streets and access plan.
City and County of Swansea	Private road/track (unnamed)	Works in the street comprising the installation and maintenance of an electrical cable <b>between the points marked R and S</b> on the rights of way, streets and access plan.
City and County of Swansea	Private access road (unnamed) leading from B4489 to Swansea North substation and Felindre gas compressor station	Works in the street comprising numbered work 2 <b>between the points marked T and W</b> on the rights of way, streets and access plan.
City and County of Swansea	Public Footpath LC34	Works in the street comprising numbered work 2 to be installed and maintained <b>between the points marked U and V</b> on the rights of way, streets and access plan.
City and County of Swansea	B4489 / Private access road (unnamed) from B4489 to Swansea North substation and Felindre gas compressor station	Temporary and permanent widening of existing junction visibility splay from B4489 comprising part of work numbered 2 <b>between the points marked X and Y</b> on the rights of way, streets and access plan.



SCHEDULE 5  
ACCESS

Article 10

PART 1

THOSE PARTS OF ACCESSES TO BE MAINTAINED AT THE PUBLIC  
EXPENSE

**Table 8**

<i>(1)</i> Area	<i>(2)</i> Street	<i>(3)</i> Description of relevant part of access
City and County of Swansea	Rhyd-y-pandy road	New road surface located in the area shown hatched blue <b>between points C and D</b> on the rights of way, streets and access plan.

PART 2

THOSE PARTS OF ACCESSES TO BE MAINTAINED BY THE STREET  
AUTHORITY

**Table 9**

<i>(1)</i> Area	<i>(2)</i> Street	<i>(3)</i> Description of the relevant part of access
City and County of Swansea	New access from Rhyd-y-pandy road	New access from Rhyd-y-pandy road in the area shown hatched pink <b>between the points marked C and D</b> on the rights of way, streets and access plan.
City and County of Swansea	Footpath LC35A	New stile/access to footpath between the <b>points marked E and F</b> on the rights of way, streets and access plan.
City and County of Swansea	New private access road (unnamed)	New access road comprising part of numbered work 2 and shown hatched pink <b>between the points marked O and T</b> on the rights of way, streets and access plan.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of the relevant part of access</i>
City and County of Swansea	Private access road (unnamed) leading from B4489 to Swansea North substation and Felindre gas compressor station	Modified access road comprising part of numbered work 2 and shown hatched pink <b>between the points marked T and W</b> on the rights of way, streets and access plan.

### PART 3

#### THOSE WORKS TO RESTORE TEMPORARY ACCESSSES WHICH WILL BE MAINTAINED AT THE PUBLIC EXPENSE

**Table 10**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
City and County of Swansea	Temporary access from Rhyd-y-pandy road	Temporary construction access in the area shown hatched pink <b>between the points marked C and D</b> on the rights of way, streets and access plan.

### PART 4

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

**Table 11**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
City and County of Swansea	Private road/track (unnamed)	Crossing points for temporary internal road within the Order land <b>between points G and H</b> on the rights of way, streets and access plan.
City and County of Swansea	Footpath LC35B	Crossing points for temporary internal road within the Order land <b>between points G and H</b> on the rights of way, streets and access plan.
City and County of Swansea	Private road/track (unnamed)	Crossing points for temporary internal road within the Order land <b>between points G and I</b> on the rights of way, streets and access plan.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
City and County of Swansea	Private track running south-east from Abergelli farm (known as “the gallops”)	Work numbered 3 <b>between points J and M</b> on the rights of way, streets and access plan.

SCHEDULE 6

Article 11

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

Table 12

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
City and County of Swansea Council	Rhyd-y-pandy road	<p><b>Prohibition/restriction:</b> between points marked <b>A</b> and <b>B</b> on the rights of way, streets and access plan, being approximately 440 metres.</p> <hr/> <p><b>Purpose of the Prohibition/restriction:</b> temporary restrictions of the use of the street, including the use of traffic management measures (erection of temporary barriers and stop/go board traffic control or two way traffic lights) and temporary speed restrictions in order to facilitate development necessary for the authorised development that takes place within the Order land.</p>
City and County of Swansea Council	Rhyd-y-pandy road	<p><b>Prohibition/restriction:</b> between the points marked <b>C</b> and <b>D</b> on the rights of way, streets and access plan, being approximately 139 metres.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street temporary closures and restrictions of the use of the street, including the use of traffic management measures (erection of temporary barriers and stop/go board traffic control or two way traffic lights) and temporary speed restrictions in order to facilitate development necessary for the authorised development that takes place within the Order land.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
City and County of Swansea	Public footpath LC35A	<p><b>Prohibition/restriction:</b> <b>between the points marked E and F</b> on the rights of way, streets and access plan, being approximately 35 metres.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the footpath and restriction of the use of the footpath at any time in order to facilitate development necessary for the authorised development that takes place within the Order land.</p>
City and County of Swansea	Private road/track (unnamed) running north-east from Abergelli farm to Rhyd-y-pandy road	<p><b>Prohibition/restriction:</b> <b>between the points marked G and H</b> on the rights of way, streets and access plan, being approximately 50 metres.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction of the use of the street at any time in order to facilitate development necessary for the authorised development that takes place within the Order land.</p>
City and County of Swansea	Public footpath LC35B	<p><b>Prohibition/restriction:</b> <b>between the points marked G and H</b> on the rights of way, streets and access plan, being approximately 50 metres.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the footpath and restriction of the use of the footpath at any time in order to facilitate development necessary for the authorised development that takes place within the Order land.</p>
City and County of Swansea	Private road/track (unnamed)	<p><b>Prohibition/restriction:</b> <b>between the points marked G and I</b> on the rights of way, streets and access plan, being approximately 57 metres.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
		<p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction of the use of the street at any time in order to facilitate development necessary for the authorised development that takes place within the Order land.</p>
City and County of Swansea	Private track running south–east from Abergelli farm (known as “the gallops”)	<p><b>Prohibition/restriction:</b> <b>between the points marked J and M</b> on the rights of way, streets and access plan, being approximately 402 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction of the use of the street at any time in order to facilitate the construction of numbered works 1, 2, 3 and 5.</p>
City and County of Swansea	Public Footpath LC117	<p><b>Prohibition/restriction:</b> <b>between the points marked P and Q</b> on the rights of way, streets and access plan, being approximately 76 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the footpath and restriction of the use of the footpath at any time in order to facilitate the construction of numbered works 1, 2, 3 and 5.</p>
City and County of Swansea	Private access road (unnamed) leading from B4489 to Swansea North substation and Felindre gas compressor station	<p><b>Prohibition/restriction:</b> <b>between the points marked R and S</b> on the rights of way, streets and access plan, being approximately 39 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the road and restriction of the use of the road in order to facilitate development necessary for the authorised development that takes place within the Order land.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
City and County of Swansea	Private access road (unnamed) leading from B4489 to Swansea North substation and adjacent Gas Compressor Station	<p><b>Prohibition/restriction:</b> <b>between the points marked T and W</b> on the rights of way, streets and access plan, being approximately 852 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction of the use of the street at any time in order to facilitate the construction of numbered works 1, 2, 3 and 5.</p>
City and County of Swansea	Public Footpath LC34	<p><b>Prohibition/restriction:</b> <b>between the points marked U and V</b> on the rights of way, streets and access plan, being approximately 35 metres.</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the footpath and restriction of the use of the footpath at any time in order to facilitate the construction of numbered works 1, 2, 3 and 5.</p>
City and County of Swansea	B4489	<p><b>Prohibition/restriction:</b> <b>between the points marked Z and AA</b> on the rights of way, streets and access plan, being approximately 129 metres.</p> <p><b>Purpose of the Prohibition/restriction:</b> temporary restrictions of the use of the street, including the use of traffic management measures (erection of temporary barriers and stop/go board traffic control or two way traffic lights) and temporary speed restrictions in order to facilitate the construction of numbered works 1, 2, 3 and 5.</p>

SCHEDULE 7

Article 12

STREETS TO BE STOPPED UP

**Table 13**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
City and County of Swansea	Private road/track	From the <b>point marked K to the point marked L</b> on the rights of way, streets and access plan, being approximately 278 metres.
City and County of Swansea	Private road/tracks running south-east from Abergelli farm (known as “the gallops”)	From the <b>point marked M to the point marked N</b> on the rights of way, streets and access plan, being approximately 355 metres.



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

*Compensation enactments*

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

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5(b)—

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

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

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

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 8 of Schedule 8 to the Abergelli Power Gas Fired Generating Station Order 2019);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 8 to the Abergelli Gas Fired Generating Station Order 2019) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection 3(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

*Application of Part 1 of the 1965 Act*

**4.** Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 26 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 18 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 22 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

**5.** The modifications referred to in paragraph 4(a) are as follows—

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(a) 1973 c.26.

- (a) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—
  - (i) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
  - (ii) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.
- (b) For section 7 of the 1965 Act (measure of compensation in case of severance) there is substituted the following section—

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

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

**7.** Section 11 (powers of entry) of the 1965 Act is modified as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 18), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are 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 or the enforcement of the restrictive covenant 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) as modified by article 26(3) is also 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 or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

**10.** For schedule 2A to the 1965 Act substitute—

## “SCHEDULE 2A COUNTER–NOTICE REQUIRING PURCHASE OF LAND

### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Abergelli Power Gas Fired Generating Station Order 2019 in respect of the land to which the notice to treat relates.

(2) Article 25(3) (acquisition of subsoil only) of the Abergelli Power Gas Fired Generating Station Order 2019 which excludes the acquisition of subsoil only from this Schedule, applies.

2. In this Schedule, “house”, except in paragraph 10, includes any park or garden belonging to a house.

### **Counter–notice requiring purchase of land**

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

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

### **Response to counter–notice**

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

- (a) withdraw the notice to treat,
- (b) accept the counter–notice, or
- (c) refer the counter–notice to the Upper Tribunal.

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

7. If the authority decide to refer the counter–notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter–notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

**11.** In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraw the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 9

Article 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 14**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Land at Abergelli Fach Farm, Felindre, Swansea	4A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land.
Land at Abergelli Fach Farm, Felindre, Swansea	5A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land.
Land at Abergelli Fach Farm, Felindre, Swansea	5B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land.
Land at Abergelli Fach Farm, Felindre, Swansea	6A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land.
Land at Abergelli Fach Farm, Felindre, Swansea	6B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land.
Land at Abergelli Fach Farm, Felindre, Swansea	7A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land.
Land at Abergelli Fach Farm, Felindre, Swansea	7B	Temporary use to facilitate construction for numbered works 1, 2, 3 and 5 and other development necessary for the authorised development that takes place within the Order land.

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Land at Abergelli Fach Farm, Felindre, Swansea	7C	Temporary use to facilitate construction for numbered works 1, 2, 3 and 5 and other development necessary for the authorised development that takes place within the Order land.
Land at Abergelli Fach Farm, Felindre, Swansea	11B	Temporary use to facilitate construction for numbered works 1, 2, 3 and 5 and other development necessary for the authorised development that takes place within the Order land.
Land forming part of Maes-Eglwys Farm, Felindre, Swansea	13A	Temporary use to facilitate construction for numbered works 1, 2, 3 and 5 and other development necessary for the authorised development that takes place within the Order land.
Land forming part of Maes-Eglwys Farm, Felindre, Swansea	13B	Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land.
Land forming part of Swansea North Substation, Felindre, Swansea	16A	Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land.
Land forming part of disused historic access track to South of Gas Compressor Station, Felindre, Swansea	17A	Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land.
Land forming part of disused historic access track to South of Gas Compressor Station, Felindre, Swansea	17B	Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land.

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Land forming part of Bryn Whilach Farm, Felindre, Swansea	18A	Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land.
Land forming part of Bryn Whilach Farm, Felindre, Swansea	18B	Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land.
Land forming part of Swansea North Substation, Felindre, Swansea	19A	Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land.

SCHEDULE 10

Article 34

REMOVAL OF HEDGEROWS

**Table 15**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Identity of hedgerow shown on hedgerow plan</i>	<i>(3)</i> <i>Extent of hedgerow that may be removed</i>
City and County of Swansea	Hedgerow B-B	Up to 210.47 metres
City and County of Swansea	Hedgerow C-C (to the extent within the Order Land)	Up to 10 metres



SCHEDULE 11(a)  
PROTECTIVE PROVISIONS

Article 38

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE  
UNDERTAKERS

1. For the protection of the utility undertakers referred to in this part of this Schedule (save for National Grid which is protected by Part 3 of this Schedule, Western Power Distribution (South Wales) plc which is protected by Part 4 of this Schedule, Dŵr Cymru Cyfyngedig which is protected by Part 5 of this Schedule, Abergelli Solar Limited which is protected by Part 6 of this Schedule, and Wales and West Utilities Limited which is protected by Part 7 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b));
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act(c) or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

- 
- (a) The protective provisions within this Schedule are draft protective provisions and are being discussed with the relevant statutory undertaker.
  - (b) 1991 c.56; Section 51A to the 1991 Act was inserted by section 92(1) of the Water Act 2003 (c.37) and amended by sections 10(2)(a), 10(2)(b) and 10(2)(c) of the Water Act 2014 (c.21).
  - (c) 1991 c.56. Section 102 was amended by sections 96(1)(a), 96(1)(b), 96(1)(c), 96(1)(d) and 96(1)(e) of the Water Act 2003 c.37 and paragraph 90 of Schedule 7 to the Water Act 2014 c.21. Section 104 was amended by section 96(4) and paragraph 9 of Schedule 1 to the Water Act 2003, section 42(3) of the Flood and Water Management Act 2010 (c.29) and section 11(2) of the Water Act 2014 (c.21).

“functions” includes powers and duties;

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the 1989 Act;
  - (b) a gas transporter within the meaning of Part 1 of the 1986 Act;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

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

**4.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**5.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**6.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42, and after the

grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filing around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**7.—**(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**8.—**(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

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

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

subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**9.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by the virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

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

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**11.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**12.—**(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act(b);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act, and

(b) a network which the Secretary of State is providing or proposing to provide;

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

**13.** The exercise of the powers of article 30 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

**14.—**(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator, or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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(a) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).

(b) These amendments were made by Schedule 1 of the Digital Economy Act 2017 (c.30).

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

**15.** This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro magnetic interference arising from the construction or use of the authorised development.

**16.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 3

### FOR THE PROTECTION OF NATIONAL GRID

#### **Application**

**17.** For the protection of National Grid as referred to in this part 3 of Schedule 11 the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

#### **Interpretation**

**18.** In this Part of this Schedule—

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

“apparatus” means—

- (a) electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid;
- (b) mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order or planning permission for the associated works that becomes operational apparatus of the undertaking for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“associated works” means the works permitted pursuant to planning permissions reference 2018/2020/FUL and 2018/2020/FUL each granted by the City and County of Swansea on 6 December 2018;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the construction, use and maintenance of the authorised development and the associated works, including the construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of the Order save that for the purposes only of this Part of Schedule 11 operations consisting environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions and receipt and erection of construction plan and equipment shall be included within the meaning of commence and the term “commencement” is to be construed to have the same meaning;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interest so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

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

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

“National Grid” means either—

- (a) National Grid Electricity Transmission PLC (company no. 2366977) whose registered office is at 1–3 Strand, London, WC2N 5EH; or
- (b) National Grid Gas PLC (company no. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH,

as the context shall require;

“specified works” means any part of the authorised development or any activities taken in association with the authorised development including associated works where such development, activities or works—

- (a) will or may be situated over, under or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 22(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 22(2) or otherwise; and
- (c) includes any activity that is referred to in paragraph 8 of T/SP/SSW/22 (the undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”);

**19.** Except for paragraphs 20 (apparatus of National Grid in streets subject to temporary prohibition or restriction), 24 (retained apparatus: protection), 25 (retained apparatus: protection),

26 (expenses) and 27 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in streets subject to temporary prohibition or restriction**

**20.**—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 12 (stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

### **Acquisition of land**

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

(2) Prior to the carrying out of any part of the authorised development or associated works (or in such other timeframe as may be agreed between the undertaker and National Grid) that is subject to the requirements of this Part of this Schedule that causes any conflict with or breach the terms of any existing easement and/or other legal or land interest of National Grid and/or affects the provisions of any existing enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and National Grid acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it must be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such part of the authorised development.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of 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.

(4) Any agreement or consent granted by National Grid under paragraph 24 or 25 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**22.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 21 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.



(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 23(1) below) the necessary facilities and rights for—

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

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

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

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

#### **Facilities and rights for alternative apparatus**

**23.—**(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration under paragraph 31 and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 42 (arbitration) of the Order shall apply.

#### **Retained apparatus: protection of National Grid as Gas Undertaker**

**24.—**(1) Not less than 56 days before the commencement of any specified work, the undertaker must submit to National Grid a plan and, if reasonably required by National Grid a ground monitoring scheme in respect of those works, the plan to be submitted to National Grid shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;

- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22".)

(2) The undertaker must not commence any works to which sub-paragraph (1) and (8) applies until National Grid has given written approval of the plan so submitted.

(3) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4) or (6); and
- (b) must not be unreasonably withheld.

(4) In relation to any work to which sub-paragraph (1) and (8) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(5) Works executed under sub-paragraph (1) or (8) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) and (8) or as relevant sub-paragraph (3), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4), (6) and/or (7) 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.

(6) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (8) (except in an emergency).

(7) If National Grid in accordance with sub-paragraph (4) or (6) 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 (2) and (5) to (6) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

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

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

- (a) comply with sub-paragraphs (4), (5) and (6) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (10) at all times.

(10) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 26.

(12) The plans submitted to National Grid by the undertaker pursuant to sub-paragraph (1) and (8) and/or paragraph 25(1) must be sent to [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) and cc'd to [spencer.jeffries@nationalgrid.com](mailto:spencer.jeffries@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

### **Retained apparatus: protection of National Grid as Electricity Undertaker**

**25.—**(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

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

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

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

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

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

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

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

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (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 (6) to (7) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

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

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

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

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

## **Expenses**

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 22(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

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

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

## **Indemnity**

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

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

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

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (b) shall be subject to the full terms of this Schedule including this paragraph 27 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

28. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the promoter, nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

29. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order the associated works or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 22(2) and paragraph 24 or 25) or any works required by National Grid in respect of their apparatus within and adjoining the Order land 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 National Grid’s undertaking.

### **Access**

30. If in consequence of the agreement reached in accordance with paragraph 21(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

31. Save for differences or disputes arising under paragraphs 22(2), 22(4), 23(1), 24 and 25 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (arbitration) of the Order.

## **PART 4**

### **FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION (SOUTH WALES) PLC**

## **Application**

32. For the protection of Western Power Distribution (South Wales) plc as referred to in this Part 4 of Schedule 11 the following provisions, unless otherwise agreed in writing between the undertaker and Western Power Distribution (South Wales) plc, have effect.

## **Interpretation**

33. In this Part of 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 and any necessary legal easements, consents, or permissions required by WPD in order to permit or authorise a diversion;

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

“diversion” means an alteration to the WPD Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

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

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

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“WPD” means Western Power Distribution (South Wales) plc (Company No. 02366985) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

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

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

## **Precedence of 1991 Act in respect of apparatus in streets**

34. This Part of 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.

## **No acquisition or extinguishment except by agreement**

35. 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.

## Removal of apparatus

36.—(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 Part of 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 and access to it has been provided if necessary 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, 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 WPD reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to WPD the necessary facilities and rights for the construction of alternative apparatus in other land owned or controlled by the undertaker and subsequently for the maintenance of that apparatus and—

- (a) if, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed;
- (b) should the undertaker not be able to obtain the alternative rights required under sub-paragraph (a) then the undertaker and WPD shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights; and
- (c) if alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (a) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph (b), WPD shall on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances 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 a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(3) Any alternative apparatus required pursuant to sub-paragraph (2) shall be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 39.

(4) WPD shall, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 39, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (2), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule 11.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(6) Nothing in sub-paragraph (5) shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

(7) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD 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 WPD or in default of agreement settled in accordance with paragraph 39.

(8) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

(9) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the expert less favourable on the whole to WPD than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert shall make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

(10) If in accordance with the provisions of this Part of this Schedule WPD require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WPD shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to paragraph 38(1).

(11) For the purposes of sub-paragraph (10)—

- (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.

**37.—**(1) Not less than 60 days before the undertaker intends to start the execution of any specified works, the undertaker shall submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, and identified any reasonable requirements it has in relation to the carrying out of the works such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 60 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD and WPD shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker shall comply with WPD's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6

Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Addition) (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub-paragraph (4) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 32 to 36 apply as if the removal of the apparatus had been required by the undertaker under paragraph 36(2).

(7) Nothing in this paragraph 37 precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) 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 (3) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

**38.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay 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 or the construction of any alternative apparatus arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

- (a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and
- (b) reimburse WPD for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by WPD, by reason or in consequence of any such damage or interruption.

(3) Nothing in sub-paragraph (2) 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 WPD, its officers, servants, contractors or agents.

(4) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) WPD shall not be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

### **Expert determination**

**39.**—(1) Article 42 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the

absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

## PART 5

### FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG

#### **Application**

**40.** For the protection of DCC referred to in this Part 5 of Schedule 11, the following provisions will, unless otherwise agreed in writing between the undertaker and DCC, have effect.

#### **Interpretation**

**41.** In this Part of this Schedule—

“accessories” has the same meaning as that set out in section 219 of the WIA 1991(a) (general interpretation) 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;

“clearance area” means the area of land—

within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;

within 6 metres either side of a public sewer or public water main where the public sewer or public water main is between 300mm and 600mm in diameter;

within 9 metres either side of the centre line of a rising main; or

within 25 metres either side of the centre line of the 66 inch water main which crosses Numbered Works 2, 3, 4 and 5A;

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(a) 1991 c.56. Section 219 was amended by paragraph 110 of Schedule 17 of the Communications Act 2003

“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;

“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 wastewater treatment works;

“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 WIA 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 is to include 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;

“WIA 1991” means the Water Industry Act 1991(a)(as amended);

“works” means, excluding any work or works to be undertaken by DCC, any works forming part of the authorised development in, on, over or under any land purchased, leased, 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; and

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

### **No acquisition or extinguishment except by agreement**

**42.**—(1) Subject to sub-paragraph (2), 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 each sub-paragraph of paragraphs 46 and 47 of this Part and to the undertaker giving DCC 28 days’ notice of such interference.

### **Precedence of the WIA 1991**

**43.**—(1) Regardless of any provision of this Order and this Part of this Schedule the undertaker must comply fully with all provisions of the WIA 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 WIA 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 of the WIA 1991 in respect of water main requisitions;
- (b) section 45 of the WIA 1991 in respect of any connections to a water main;

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(a) 1991 c.56.

- (c) sections 98 to 101 of the WIA 1991 in respect of sewer requisitions;
- (d) section 102 of the WIA 1991 in respect of the adoption of sewers and disposal works;
- (e) section 104 of the WIA 1991 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;
- (f) sections 106 to 109 of the WIA 1991 (inclusive) in respect of any connections to public sewers;
- (g) section 111 of the WIA 1991 in respect of the restrictions on use of public sewers;
- (h) sections 158 and 159 of the WIA 1991 in respect of statutory rights of access to DCC apparatus;
- (i) section 174 of the WIA 1991 in respect of offences of interference with works etc;
- (j) section 178 of the WIA 1991 in respect of obstruction of sewerage works etc; and
- (k) section 185 of the WIA 1991 in respect of the removal, diversion or alteration of DCC apparatus.

(2) The arbitration provisions at article 42 or specified in this Part of Schedule 11 do not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.

### **Protection of DCC apparatus**

**44.**—(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 43(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 is to be 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 44 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 44 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 45 save that the undertaker must comply with sub-paragraphs (1) and (3) above in so far as is reasonably practicable in the circumstances.

(6) DCC may opt to carry out any temporary and/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 the 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 and/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**

**45.**—(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 contractors or subcontractors 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. In the event of such instruction being given by DCC—

- (a) the undertaker must procure that it and its contractors and subcontractors are to forthwith suspend or cease the works having due regard to health and safety factors, and 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 must submit to the undertaker within 3 days following the suspension, a written notice specifying the reasons for suspending the works;
- (d) in the event that DCC fails to supply the written notice within 3 days of suspension, DCC's instruction to suspend the works will be void and the undertaker will be entitled to recommence the works; and
- (e) DCC must commence, carry out and complete any remedial works pursuant to sub-paragraph (1), 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 will be entitled to resume the works.

(2) DCC is entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 45.

(3) DCC must use its reasonable endeavours to minimise any costs, expenses, loss, demands and penalties to which this paragraph 45 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 45 for claims reasonably incurred by DCC.

**46.**—(1) In the event that either the undertaker or DCC (for the purpose of this paragraph 46 "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 cooperate 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 reference 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 41 does not apply.

(2) Subject to paragraph 47, differences or disputes arising between the undertaker and DCC under this Part of Schedule 11 must, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 42 (arbitration) of the Order.

## **Emergency Works**

47.—(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 in accordance with this sub-paragraph the indemnity in paragraph 48 is to apply.

(2) DCC must at all times be permitted to carry out any emergency works in relation to its DCC apparatus within the Order limits in accordance with Part II, Schedule 6 WIA 1991 (Other rights of entry and related powers).

(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph (2) are to 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 reference to ‘work’ and ‘works’ in this paragraph 47, to the extent that is ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 41 of this Part does not apply.

## **Damage to DCC apparatus**

48.—(1) Subject to sub-paragraphs (3), (4), (6) and (7), the undertaker must indemnify and hold harmless DCC against all claims, demands, costs, damages, expenses, penalties and losses which DCC sustains or becomes liable for in consequence of works under paragraph 44(1) and emergency works under paragraph 47 (but only where such emergency works are carried out by the undertaker without prior notification to DCC in accordance with paragraph 47) to this Part in respect of—

- (a) the commencement, carrying out, execution or retention of the works or any breach of this Part 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, licensees, 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 and/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), (6) and (7), the undertaker shall 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) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DCC, its officers, servants, contractors or agents.

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

(5) Neither the undertaker, nor any of its officers, employees or agents in any circumstances whatsoever be liable for any indirect or consequential loss.

(6) Nothing in this Part 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.

(7) 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 48 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 48 for claims reasonably incurred by DCC.

## PART 6

### FOR THE PROTECTION OF ABERGELLI SOLAR LIMITED

#### **Application**

**49.** For the protection of the solar operator as referred to in this Part 6 of this Schedule 11, the following provisions will, unless otherwise agreed in writing between the undertaker and the solar operator, have effect.

#### **Interpretation**

**50.** In this Part of this Schedule—

“apparatus” means any electrical cables, fibre optic cables or other apparatus belonging to or maintained by the solar operator for the purposes of electricity generation and for the export of electricity pursuant to the solar farm permission (including but not limited to all reasonably necessary protective equipment for such electricity generation and export of electricity such as security devices and fencing);

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

“solar farm permission” means full planning permission granted by the City and County of Swansea on 28 May 2013 for the installation of ground mounted array of solar panels, inverter substations and 2.4m fencing on the land at Abergelli Farm, Felindre, Swansea, SA5 7NN (ref 2013/0135);

“solar farm site” means the site on which planning permission was granted by the solar farm permission;

“solar operator” means Abergelli Solar Limited (Company No. 07529596) being the operator of the solar farm on the solar farm site which has consent pursuant to the solar farm permission; and

“specified work” means so much of any of the works comprised in the authorised development or works required to facilitate or which are incidental to the authorised development which are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus.

#### **Acquisition of land**

**51.** 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 apparatus or extinguish any easement or other interest of the solar operator otherwise than by agreement (such agreement not to be unreasonably withheld).

#### **Access**

**52.** If in consequence of the agreement reached in accordance with paragraph 51 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 the solar operator to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### **Apparatus in streets subject to temporary prohibition or restriction**

**53.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), the solar operator is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or



desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

### **Specified Works**

**54.**—(1) Not less than 28 days before starting the execution of any specified work in, on or under any land purchased, leased, held, appropriated or used under this Order that are within 6 metres of any apparatus, or will or may affect any apparatus, the undertaker must submit to the solar operator a plan, section and description of the specified works to be executed.

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

(3) Any requirements made by the solar operator under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified 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.

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

### **Expenses and costs**

**55.** The undertaker must pay to the solar operator the reasonable expenses incurred by the solar operator in, or in connection with, the inspection, alteration or protection of any apparatus which may be required in consequence of the execution of any specified work.

**56.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus, or there is any interruption in any service provided, or in the supply of any goods, by the solar operator, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the solar operator in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the solar operator for any other expenses, loss, damages, penalty or costs incurred by the solar operator,

by reason or in consequence of any such damage or interruption.

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

(3) The solar operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The solar operator must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph 56 applies. If requested to do so by the undertaker, the solar operator shall provide an explanation of how the

claim has been minimised. The undertaker shall only be liable under this paragraph 56 for claims reasonably incurred by the solar operator.

### **Expert determination**

**57.**—(1) Article 42 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

## **PART 7**

### **FOR THE PROTECTION OF WALES & WEST UTILITIES LIMITED**

#### **Application**

**58.** For the protection of the protected person referred to in this Part 7 of Schedule 11 the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person, have effect.

#### **Interpretation**

**59.**—(1) In this Part of this Schedule—

“apparatus” means in the case of the protected person, pipes or other apparatus belonging to or maintained by Wales & West Utilities Limited for the purposes of gas transmission and distribution;

“authorised development” has the same meaning as in Schedule 1 (authorised development) of this Order;

“commence” has the same meaning as in article 2 (interpretation) and commencement shall be construed to have the same meaning;

“functions” includes powers and duties;

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

“maintain” and “maintenance” shall have the same meaning as in article 2 (interpretation);

“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;

“protected person” means Wales & West Utilities Limited, a limited company registered under Company No 05046791 and having its registered office at Wales & West House, Spooner Close, Coedkernew, Newport, South Wales NP10 8FZ, being a gas transporter within the meaning of Part 1 of the 1986 Act; and

“protective works” means such works as are necessary to protect the protected person’s apparatus arising as a result of the construction, operation or maintenance of the authorised development.

(2) Except for paragraphs 62 (retained apparatus: Protection: Protected Persons) and 63 (expenses) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of the protected person in streets subject to temporary prohibition or restriction**

**60.** Notwithstanding the temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction of use of streets), the protected person shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

### **Acquisition of Land**

**61.** 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 the protected person otherwise than by agreement (such agreement not to be unreasonably withheld).

### **Retained apparatus: Protection: Protected Persons**

**62.—**(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works that are within 24 metres of any apparatus the undertaker must submit to the protected person in question a plan. For the avoidance of doubt, there is no requirement for any plan submitted by the undertaker under this sub-paragraph to be approved by the protected person.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works;

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

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld or delayed.

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

(6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the protection of the apparatus, for securing access to the apparatus, and the protected person shall be entitled to watch and inspect the execution of this works. In the event of unforeseen circumstances occurring during the execution of the works, the undertaker and protected person must work together, acting reasonably, to resolve the issue in the interests of the protection of both parties' assets.

(7) Where protected persons 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 protected persons' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and the protected person will give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) (except in an emergency).

(8) Nothing in this paragraph will preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works comprising the authorised development (and to which sub-paragraph (1) applies), a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(9) The undertaker will 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 shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (10) at all times.

(10) At all times when carrying out any works authorised under the Order comply with Wales & West Utilities Limited's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of pipelines and associated installation operating above 2 BAR's" and HSE's "HSG47 Avoiding Danger from underground services" or any other safe working policies issued by Wales & West Utilities Limited's Plant Protection department prior to the date of any relevant approval given by the protected person pursuant to sub-paragraph (3).

## Expenses

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

- (a) the approval of plans;
- (b) the carrying out of protective works (including any temporary protective works and their removal);
- (c) 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) The undertaker will not be liable to the protected person pursuant to sub-paragraph (1) unless the protected person has submitted to and agreed with the undertaker details of the works required unless such works are required in an emergency.

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

(4) The protected person must use its reasonable endeavours to minimise any charges, costs and expenses to which this paragraph 63 applies. If requested to do so by the undertaker, the protected person shall provide evidence of the charges, costs and expenses, and an explanation of how the same has been minimised. The undertaker shall only be liable under this paragraph 63 for amounts reasonably incurred by the protected person.

## Indemnity

**64.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the 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 Order, any material damage is caused to any apparatus or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by the protected person in making good such damage or restoring the supply; and
- (b) indemnify the protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party as aforesaid.

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

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the protected person, its officers, servants, contractors or agents or is otherwise caused by or is attributable to the protected person; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by the protected person as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 7 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section 3(b) shall be subject to the full terms of this Schedule including this paragraph 64 in respect of such new apparatus.

(4) The protected person must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise will be made without first consulting the undertaker and taking into account its representations.

(5) The protected person must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph 64 applies. If requested to do so by the undertaker, the protected person shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 64 for claims reasonably incurred by the protected person.

### **Enactments and agreements**

**65.** Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person 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**

**66.** The protected person and the undertaker must use all reasonable 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**

**67.** If in consequence of the agreement reached in accordance with paragraph 62 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**68.** Any difference or dispute arising between the undertaker and the protected person under this Schedule will, unless otherwise agreed in writing between the undertaker and the protected person, be determined by arbitration in accordance with article 42 (arbitration).

## PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**Applications made under requirements**

1.—(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 their decision on the application within a period of eight weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or

such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to sub-paragraph (3), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environment statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1), then if either—

- (a) the application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant planning authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(5) Where an application is made to a relevant planning authority for a consent, agreement or approval required by a requirement they may grant such consent, agreement or approval either unconditionally or subject to conditions.

**Further information**

2.—(1) In relation to any part of the application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant planning authority must, within

twenty-eight days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within twenty-eight days of receipt of the application.

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is to 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 2 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b), paragraph 1(4) and paragraph 2.

## **Appeals**

3.—(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) the relevant planning authority is deemed to have refused an application pursuant to paragraph 1(4);
- (c) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) 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 to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee (together with the undertaker, these are the “appeal parties”);
- (b) the Secretary of State must appoint a person within twenty business days of receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within twenty business days of receipt of written representations pursuant to sub-paragraph (c) above;
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and.



(f) the appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and any requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e).

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

(a) allow or dismiss the appeal, or

(b) reverse or vary any part of the decision of the relevant 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 him in the first instance.

(6) 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.

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

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

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) 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) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

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

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

(12) 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 is to be made, the appointed person must have regard to the Development Management Manual, Section 12 Annex: Award of Costs, or any circular or guidance which may from time to time replace it.

## **Interpretation of Schedule 12**

4. In this Schedule 12—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971; and

“requirement consultee” means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for, and authorises Abergelli Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose as well as to override easements and other rights.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 39 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Swansea Central Library, Civic Centre, Oystermouth Road, Swansea, SA1 3SN.

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