



## Glyn Rhonwy Pumped Storage Development Consent Order

### Draft Development Consent Order

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<b>Author</b>	Burgess Salmon LLP	
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# 201[X] No. [ ]

## INFRASTRUCTURE PLANNING

### The Glyn Rhonwy Pumped Storage (Generating Station) Order 201[X]

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - - \*\*\*

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

The application was examined by OR 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(c).

The single appointed person, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with [section 83(1)] [section 74(2)] of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, is satisfied that the open space comprised within the Order land (as defined in article 2 of the Order), will, where it is to be acquired, be replaced with replacement land which will be subject to the same rights, trusts and incidents as the acquired land, and that accordingly section 131 (4) of the Act applies; and where only new rights are to be created, that the open space will, when burdened with the new rights authorised for compulsory acquisition under the terms of this Order, be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that accordingly section 132(3) of the 2008 Act applies.

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

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

## PART 1

### Preliminary

#### Citation and Commencement

1. This Order may be cited as the Glyn Rhonwy Pumped Storage (Generating Station) Order 201[X] and shall come into force on [\*\*\*].

#### Interpretation

2.—(1) In this Order-

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

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

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(a) S.I. 2009/2264, as amended by S.I. 2010/493, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732 S.I. 2013/522 and SI 2014/2381

(b) 2008 c.29.

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

(d) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

(e) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part I of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (I) of section II and sections 3,31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and

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

“the 1984 Act” means the Road Traffic Regulation Act 1984(b);

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

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

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

“access plan” means the plan having drawing number GR\_151001\_DCO\_2.09.4\_v2 and certified as the access plan by the Secretary of State for the purposes of this Order;

“AOD” means above ordnance datum (and is the height relative to average sea level at Newlyn, Cornwall, UK);

“apparatus” means any equipment, pipes, cables, ducts or other similar infrastructure situated in or over the Order limits including any means of access to the same.

“authorised development” means the development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

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

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

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

“commence” means begin to carry out any material operation (as defined in section 155 of the 2008 Act) in respect of the authorised development or forming part of the authorised development, except for investigations for the purpose of assessing ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure or the temporary display of site notices or advertisements; and “commencement” and “commenced” must be construed accordingly.

“environmental statement” means the environmental statement together with appendices and figures submitted with the application for this Order and certified as the environmental statement by the Secretary of State;

“hedgerow plan” means the plan having drawing number GR\_160324\_HEDGE\_v2 and certified by the Secretary of State as the hedgerow plan for the purposes of this Order;

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

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Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

- (a) 1.1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 2(A) was inserted, and section 1(3) was amended, by section 259 (I), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.7 1), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.II), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1984 c.27.
- (c) 1990 c.8. Section 206 was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (d) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (e) 2008 c.29.

“indicative engineering drawings and sections” means the engineering drawings and sections for the authorised development having drawing numbers 2.02, 2.05.1, 2.05.2, 2.05.3, 2.05.4, 2.05.5, 2.06.1, 2.06.2, 2.06.3, 2.06.4, 2.06.5, 2.06.6, 2.06.7, 2.06.8, 2.06.9, 2.06.10 and 2.06.11; and certified by the Secretary of State as the indicative engineering drawings and section for the purposes of this order;

“the land plans” means the plans having drawing numbers 141004-EXPA-LAND-001 Revision H, 141004-OVER-LAND-001 Revision H, and 141004-OVER-LAND-002 Revision H. certified as the land plans by the Secretary of State for the purposes of this Order;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace; reconstruction and replacement includes works which can be carried out from within the development including but not limited to relining on inner facings and replacement of components but will not include construction works on land outwith the authorised development and;

“maintenance” is to be construed accordingly;

“MW” means megawatt;

“Natural Resources Wales” means the Natural Resources Body for Wales or any successor body to the function concerned;

“open space” means the areas of the Order land listed in Part 5 of the book of reference;

“Order land” means the land shown coloured pink, green and blue on the land plans subject to compulsory acquisition, and which is described in the book of reference.

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

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

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

“relevant planning authority” means Gwynedd Council as the planning authority for the area in which the authorised development is situated;

“requirement” means a requirement set out in Part 2 of Schedule 1 (Requirements);

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

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street, and includes part of a street;

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

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

“TPO plan” means the plan having drawing number GR\_160323\_7.2\_v4 certified as the TPO plan by the Secretary of State for the purposes of this Order;

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

“undertaker” means Snowdonia Pumped Hydro Limited a company incorporated in England (Company Number 8644844) with registered office of 1 Finsbury Circus, London.

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

“the works plans” means the plans having drawing numbers; GR\_150818\_DCO\_2.04a\_v3, GR\_160329\_DCO\_204b\_v16, GR\_160329\_DCO\_2.04c\_v16 and GR\_160329\_DCO\_2.04d\_v16, and certified as the works plans by the Secretary of State for the purposes of this Order.

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

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

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

(4) References in this Order to a numbered work are references to a work number in Part 1 of Schedule 1 (authorised development) and shown on the works plans.

## PART 2

### Principal Powers

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

**3.**—(1) Subject to the provisions of this Order and to the requirements in Part 2 of Schedule 1 (requirements) to this Order the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to article 6 (power to deviate) each numbered work may only be constructed within the area shown for that numbered work on the works plans.

#### **Procedure in relation to approvals etc under requirements**

**4.**—(1) Where an application is made to or request is made of the relevant planning authority, Natural Resources Wales, a highway authority, a 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 this Order (other than those required by the terms of the requirements set out in part 2 of Schedule 1 to this Order) such consent, agreement or approval must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) Schedule 9 (Discharge of Requirements) is to have effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements set out in Part 2 of Schedule 1 to this Order.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989.

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

**5.** The undertaker may at any time and from time to time maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

#### **Power to deviate**

**6.**—(1) In constructing or maintaining the authorised development comprising works numbered 1A to 4F in part 1 of Schedule 1 (authorised development), the undertaker may deviate from the indicative engineering drawings and sections;

- (a) laterally to any extent provided that the work remains within the area shown for that work on the works plans; and
- (b) in relation to the underground structures, vertically upwards to any extent which may be necessary or expedient from the ordnance datum levels shown in the indicative engineering drawings and sections, and vertically downwards to a maximum of 10m from the ordnance datum levels shown in the indicative engineering drawings and sections.

(2) Any deviation under paragraph (1) is only permitted if it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### **Operation of generating station subject to requirement to obtain licence**

7.—(1) The undertaker is hereby authorised to operate and use the authorised development for generating electricity.

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

### **Benefit of Order**

8.—(1) Subject to paragraph (2), the provisions of this Order conferring powers on the undertaker will have effect solely for the benefit of the undertaker.

(2) The undertaker may, with the consent of the Secretary of State—

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

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

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

(5) The consent of the Secretary of State is not required for a transfer or grant for an agreed period of the benefit of any of the provisions (and any related statutory rights) to another body licensed under section 6 of the 1989 Act, or formally exempted from requiring such a licence.

(6) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State and to the relevant planning authority stating—

- (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 (4), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted;
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
- (f) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(7) The date specified under (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.



## Defence to proceedings in respect of statutory nuisance

**9.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (c), (d) (e), (g) and (ga) of section 79(1) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the 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) or 65 (noise exceeding registered level) of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

## Street works

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

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

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

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

## Stopping up of streets

**11.**—(1) Subject to the provisions of this article, 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 3 (streets to be stopped up) to the extent specified, by reference to the letters shown on the access plan, in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

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(a) 10.(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.  
(b) 1974 c.4D. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

- (a) the new street to be substituted for it, which is specified in column (4) of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

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

(4) This article is subject to article 34 (apparatus etc. of statutory undertakers in stopped-up streets).

### **Application of the 1991 Act**

**12.—**(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway is to be treated for the purposes of Part 3 of the 1991 Act (street works) as major highway works if-

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions applies (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under the powers conferred by article 13 (temporary stopping up of streets) and the carrying out of streets works under article 10 (street works) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works); section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street); section 76 (liability for cost of temporary traffic regulation); section 77 (liability for cost of use of alternative route); and

all other such provisions as apply for the purposes of the provisions mentioned above.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

### **Temporary prohibition and restriction of streets**

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

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

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified by reference to the letters shown on the access plan in column (3) of that Schedule.

(4) The undertaker must not temporarily stop up, alter or divert-

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

(5) The undertaker may not temporarily stop up or divert any street unless and until any alternative or diverted route which is to be provided is in place and available for use by the public.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute by the Tribunal as if the compensation were due, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4) (b) that street authority will be deemed to have granted consent.

(8) The undertaker is not obliged to obtain any order under Section 14 of the 1984 Act for the temporary stopping up or diversion of any street which is authorised under this Order.

(9) Any application for consent to which Article 13(7) applies must note the time period allowed by that Article on the letter accompanying that application.

### **Access to works**

**14.—**(1) The undertaker may, for the purposes of the construction or maintenance of the authorised development-

- (a) form and layout means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works) at or about any of the locations specified in column 2 of that Schedule;
- (b) with the approval of the relevant planning authority, such approval not to be unreasonably withheld, after consultation with the highway authority, form and layout such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development; and
- (c) undertake works for the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order.

(2) If the relevant planning authority having received an application for approval under paragraph (1) (b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it will be deemed to have granted approval.

(3) Any application to which Article 14(2) applies must note the time period allowed by Article 14(2) on the letter accompanying that application.

### **Construction and maintenance of new or altered streets**

**15.**—(1) Any street to be constructed under this Order is to be completed to the reasonable satisfaction of the highway authority and will, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

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

(3) 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.

(4) For the purposes of a defence under paragraph (3), the court will in particular have regard to the following matters-

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

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

(5) Nothing in this article-

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker will not by reason of any duty under that article to maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

### **Agreements with street authorities**

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

- (a) the construction of any new street authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) any stopping up, alteration or diversion of a street authorised by this Order; or
- (d) the carrying out in the street of any of the works referred to in article 10(1) (street works).

(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.

### **Discharge of water**

**17.—**(1) Subject to requirements 6 (CoCP), 8 (water management plan) and 20 (excess water management strategy) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

(3) The undertaker 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 may 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 such approval will 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 not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

(7) This article does not authorise any groundwater activity or water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010(b).

(8) If a person who receives an application or consent under paragraph (3) or approval under paragraph (4) (a) fails to notify the undertaker of a decision within 28 days of receiving an application or consent under paragraph (3) or approval under paragraph (4) (a) that person will be deemed to have granted consent or given approval, as the case may be.

(9) Any application to which Article 17(8) applies must note the time period allowed by Article 17(8) on the letter accompanying that application.

(10) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the making of a connection to or, the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (3).

(11) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, an internal drainage board, a local authority, a National Park Authority or a sewerage undertaker ; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

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

(b) S.I.2010/675

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

**18.—**(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits 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; 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 upon entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article-

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

but such consent must not be unreasonably withheld.

(5) The undertaker shall 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, pursuant to Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority fails to notify the undertaker of a decision within 28 days of receiving an application or consent under paragraph (4)(a) or (4)(b), as the case may be, that authority will be deemed to have granted consent.

(7) Any application to which Article 18(6) applies must note the time period allowed by Article 18(6) on the letter accompanying the application.

(8) As soon as practicable following the exercise of any powers under paragraph (1), any apparatus or equipment must be removed and the land must be restored to the reasonable satisfaction of the owner of the land.

## **PART 3**

### **Powers of acquisition**

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

**19.—**(1) Subject to paragraph (3) of this article the undertaker may acquire compulsorily so much of the Order land as is specified in the book of reference and which is required for the authorised development or to facilitate, or is incidental, to it or is required as replacement land.

(2) This article is subject to –

- (a) paragraph (2) of article 22 (compulsory acquisition of rights);
- (b) article 24 (acquisition of subsoil only); and

(c) article 40 (Crown Rights)

(3) (a) In this paragraph ‘the access land’ means the land numbered Plot 65 and described in Part 1 of the book of reference and ‘the exchange land’ means the land numbered Plot 42 and described in Part 1 of the book of reference.

(b) If the undertaker acquires compulsorily the access land then as from the latest of the dates mentioned in sub-paragraph (c) of this paragraph, the exchange land must vest in the persons in whom the access land was vested immediately before it was vested in the undertaker, subject to the like rights (including rights of common), trusts and incidents as attached to the access land except for the rights to a private water supply across the access land and described in Part 3 of the book of reference.

(c) The dates referred to in sub-paragraph (b) of this paragraph are:

- (i) the date on which the plot of the access land is vested in the undertaker;
- (ii) the date on which the exchange land is vested in the undertaker.

(4) The power to compulsorily acquire the access land can only be exercised by the undertaker if the exchange land is acquired compulsorily by the undertaker at the same time (unless the exchange land has already been acquired by the undertaker by agreement.)

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

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

- (a) no notice to treat 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 as applied by article of the (application of the Compulsory Purchase (Vesting Declarations) Act 1981(a).

### **Incorporation of the mineral code**

**21.**—(1) Parts 1, 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(b) (minerals) are incorporated in this Order and will apply to the exercise by the undertaker of the powers conferred under articles 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 23 (Private rights), 25 (acquisition of part of certain properties) and 27 (application of Compulsory Purchase (Vesting Declarations) Act, subject to the modifications that-

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”;
- (c) for the “undertaking” substitute the “authorised development”;
- (d) in paragraph 1(1) after “compulsory purchase order” insert “or notice served under section 11(1) of the 1965 Act.

(2) In this article “mines” has the same meaning as in paragraph I of Part I of Schedule 2 to the Acquisition of Land Act 1981.

### **Compulsory acquisition of rights**

**22.**—(1) The undertaker may acquire compulsorily such rights over the Order land as is specified in the book of reference and which may be required for any purpose for which that

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(a) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.1 I). There are other amendments to the 1981 Act which are not relevant to this Order.

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

land may be acquired under article 19 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 6 (land in which only new and existing rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to—

- (a) the acquisition of such new rights under paragraph (1) as may be required for the purpose specified in relation to that land in column (2) of that Schedule; and
- (b) the extinguishment of private rights under article 23 (private rights).

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over the Order land under paragraph (1) or (2) the undertaker cannot be required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) is to have effect for the purpose of modifying the enactments referred to in that schedule in their application in relation to the compulsory acquisition under this article of a right over the Order land by the creation of a new right.

### **Private rights**

**23.—**(1) Subject to the provisions of this article, all private rights over the Order land and which are specified as to be extinguished in the book of reference are to be extinguished, to the extent set out in part 3 of the book of reference-

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

whichever is the earlier.

(2) The undertaker may interfere with private rights over the Order land specified in the book of reference only to the extent set out in the book of reference.

(3) 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) applies.

(4) Paragraphs (1) to (3) will have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the Order land or the acquisition of rights over or affecting the Order land, or
  - (ii) the undertaker's entry onto it,that any or all of those paragraphs will not 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 in question is vested or belongs.

(5) If any such agreement as is referred to in paragraph (4)(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 will be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(6) Any person who suffers loss by the extinguishment or interference with of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, by the Tribunal as if the compensation were due under Part 1 of the 1961 Act.



### **Acquisition of subsoil only**

**24.**—(1) The undertaker may acquire compulsorily so much of or such rights in the subsoil of the land referred to in article 19 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole land.

(2) In connection with the compulsory acquisition of the existing rights and the compulsory creation and acquisition of new rights referred to in article 22 (compulsory acquisition of rights) the undertaker may acquire compulsorily such rights in the subsoil as may be required for any purpose for which such rights may be acquired under that provision.

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

(4) Paragraph (3) does not prevent article 25 applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Acquisition of part of certain properties**

**25.**—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where-

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

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

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

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

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

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

the owner is required to sell the land subject to the notice to treat.

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

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

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

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

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

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

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

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

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

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

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

#### **Guarantees in respect of payment of compensation etc.**

**26.**—(1) The undertaker must not exercise the powers under articles 19, 22, 23 or 24 until –

- (a) subject to paragraph (3), security of £190,000 has been provided in respect of the liabilities of the undertaker to pay compensation under this Order; and
- (b) The relevant planning authority has approved the security in writing.

(2) The security referred to in paragraph (1) may include;

- (a) the deposit of a cash sum;
- (b) a payment into court;
- (c) an escrow account;
- (d) a bond provided by a financial institution operating within the United Kingdom;
- (e) an insurance policy; or
- (f) a guarantee by a person of sufficient financial standing other than the undertaker.

(3) The relevant planning authority may agree to the substitution of a different sum to that of £190,000 referred to in paragraph (1) having regard to the liabilities of the undertaker to pay compensation under this Order existing at the time of the approval under that paragraph (1).

(4) A security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(5) The security required under this article is to be in place for a minimum of 20 years from the date on which the relevant power is exercised. The security may be reduced by the amount equivalent to any claims paid prior to the expiry of the 20 years at the discretion of the undertaker.

(6) The relevant planning authority has no liability to pay compensation in the respect of any exercise of any power of compulsory acquisition of land or otherwise under this Order.

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

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

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

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

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

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

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

(5) In that section, for subsections (5) and (6) there is to substituted—

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

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

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

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

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

## **Power to override easements and other rights**

**28.**—(1) The carrying out or use of development authorised by this Order 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 the user of the land arising by virtue of a contract.

(2) The interests and rights to which this article applies include any easements, liberties, privileges and advantages annexed to land and adversely affecting other land, including any natural right to support, and include restrictions as to the user of the land arising by virtue of a contract having that effect or any other covenants, trusts or incidents.

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(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Parr 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(0) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

- (3) Compensation in respect of any interference or breach pursuant to this article—
- (a) is payable under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance); and
  - (b) will be assessed subject to section 10(2) of the 1965 Act which will be applied to the construction of this paragraph (with any necessary modifications).
- (4) Nothing in this article is to be construed as authorising any act or omission on the part of any person that is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

## PART 4

### Miscellaneous and general

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

**29.**—(1) This article applies to—

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

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

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

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to-

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Operational land for purposes of the 1990 Act**

**30.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

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

**31.**—(1) The undertaker may fell or lop any tree or shrub within or encroaching upon the Order limits, 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) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and is to pay compensation to any person for any loss or damage arising from such activity.

(3) The undertaker may remove any hedgerows within the Order limits and shown on the hedgerow plan that may be required for the purposes of the carrying out of the authorised development.

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

(5) Nothing in this Article shall authorise any works to any tree subject to a Tree Preservation Order.

(6) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined by the Tribunal as if the compensation were due under Part 1 of the 1961 Act.

(7) In this article "hedgerow" has the meaning given in the Hedgerow Regulations 1997.

### **Trees subject to tree preservation orders**

**32.**—(1) The undertaker may fell or lop any tree specified in this article, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development as agreed in advance with the relevant planning authority.

(2) The trees specified for the purposes of paragraph (1) are those falling within

- (a) Area 1;
- (b) Area 3;
- (c) Area 4;
- (d) Area 5;
- (e) Area 6;
- (f) Area 7;
- (g) Area 8;
- (h) Group 1 and
- (i) Group 8

of the Arfon Borough Council (1991) Tree Preservation Order relating to groups of trees and woodland at Glyn Rhonwy, Llanberis in the County of Gwynedd and as shown on the TPO plan.

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

- (a) the undertaker must not do unnecessary damage to any tree or shrub and is to pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(4) The authority given by paragraph (1) constitutes deemed consent under the relevant tree preservation order.

(5) 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.

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(a) S.I. 1997/1160

### **Statutory undertakers**

**33.**—(1) The undertaker may for the purposes of article 10 (street works) remove or reposition apparatus belonging to statutory undertakers which is laid beneath the relevant streets

(2) Subject to the provisions of Schedule 8 (protective provisions) the undertaker may—

- (a) Construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order limits; and
- (b) Remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order limits.

(3) In this article, a reference to a statutory undertaker includes a reference to a public communications provider as defined in article 35 (recovery of costs of new connections).

### **Apparatus and rights of statutory undertakers in stopped-up streets**

**34.**—(1) Where a street is stopped up under article 11 (stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 11 (stopping up of streets), any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker, will—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker is to pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with-

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

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

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

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

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

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

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) 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 utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

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

**35.**—(1) Where any apparatus of a statutory undertaker, public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus 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 33 (statutory undertakers), any person who is—

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

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

(3) This article shall not have effect in relation to apparatus to which article 34 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

### **Protection of interests**

**36.** Schedule 8 (protection of electricity, gas, water and sewerage undertakers and public communications providers) to this Order shall have effect.

### **Removal of human remains**

**37.**—(1) In this article “the specified land” means the Order limits.

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

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

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to Gwynedd Council.

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(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.

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

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

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

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

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

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

(9) If—

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

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

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

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

- (a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to Gwynedd Council mentioned in paragraph (4).

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

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



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

### Service of Notices

**38.**—(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>(b)</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—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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

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

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

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

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

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

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

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

(b) 1978 c.30.

- (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.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent that it would be if served, given or supplied by means of a notice or document in printed form.

### **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) the land plans;
- (c) access plan;
- (d) the works plans;
- (e) the indicative engineering drawings and sections,
- (f) the environmental statement; and
- (g) any other plans or documents referred to in this Order,

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

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

### **Crown rights**

**40.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) To take, use, enter upon or in any manner interfere with any land or rights of any description (including any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of The Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) To acquire compulsorily any interest in or right over Crown Land unless the appropriate Crown Authority consents to such an acquisition.
- (c) To exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

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

(3) In this article “Crown Land” and the “relevant Crown Authority” have the same meaning as given in s277 of the 2008 Act.

## Arbitration

41. 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.

Signatory text

	<i>Name</i>
Address	Head of National Infrastructure Consents
Date	Department of Energy and Climate Change

## SCHEDULES

### SCHEDULE 1

#### Authorised development

#### PART 1

Article 2

#### Authorised development

#### **In the County of Gwynedd—**

A pumped storage electricity generating station with an output capacity of up to 99.9MW comprising a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act consisting of-

Work No 1A —

- (a) a dam up to an elevation of 395m AOD;
- (b) a reservoir holding up to 1.3 million cubic metres of water with an operational water level of up to 392m AOD;
- (c) a scour tower within the reservoir;
- (d) a spillway infrastructure to the Nant Y Betws;
- (e) operational fencing comprising of stock proof, post and wire fencing with a ditch behind; and
- (f) operational / maintenance access track and gate.

Work No 1B – the creation of new and reprofiled permanent slate mounds and appropriate drainage infrastructure (comprising an extension to existing mounds and creation of a new mound adjacent to the existing tip) with a maximum combined volume of up to 935,000m<sup>3</sup>

Work No 1C – a series of temporary and permanent public right of way diversions as described in Schedule 3.

Work No 1D – two temporary construction compounds for the siting of temporary laydown storage areas, and temporary construction site offices.

Work No 1E – temporary replacement car park during construction.

Work No 1F – permanent car park post construction.

Work No 1G – reprofiling of existing slate mounds, grouting of connecting tunnels, access, perimeter grouting, stabilisation works, pollution prevention works, laying of geotextiles for ground protection, temporary storage of materials and plant and fencing .

Work No 1H – replacement open space land;

Work No 2 – an underground penstock with connection between Work No 1A and Work No 3A incorporating penstock access shafts in Work No 1A and 3B.

Work No 3A –

- (a) an above ground power house building containing workshop, turbine hall access shaft, internal crane and administration and control building;
- (b) electrical switchgear station building containing gas insulated switchgear and associated control rooms, and infrastructure (including cables) to provide a 132kV connection to the distribution network;
- (c) main and auxiliary transformers;
- (d) other ancillary permanent buildings, structures and plant including car parking, security fencing and entry point including permanent operational perimeter fencing, internal access, connections to existing site drainage and utilities, landscaping and other boundary treatments and security lighting;
- (e) a construction compound, temporary laydown storage area, and temporary construction facilities including site offices and welfare buildings;

Work No 3B -

- (a) creation of an underground turbine hall, installation of up to two underground turbines and their associated fittings, holding bay, water treatment plant, stoplocks, and other ancillary machinery;
- (b) a tailrace; and
- (c) a temporary construction tunnel and shaft.

Work No 4A –

- (a) a dam up to elevation of 156m AOD;
- (b) a reservoir holding up to 1.3 million cubic metres of water with an operational water level of 154m AOD;
- (c) a scour tower, within the reservoir;
- (d) spillway infrastructure, to Llyn Padarn;
- (e) a retaining wall within dam for access road;
- (f) drainage work involving gravity fed drainage channel with ancillary drainage works and pumps, sealing tunnels; and.
- (g) landscaping and re-profiling of adjacent existing slate mounds.

Work No 4B – a temporary construction compound;

Work No 4C –re-profiling and stabilisation of adjacent spoil mounds and quarry wall;

Work No 4D – configuration of and improvements to existing private road network;

Work No 4E – spillway infrastructure to Llyn Padarn;

Work No 4F – an underground permanent pumping station, above ground kiosk or control box and entry man hole cover and hatch.

Within Work 3 or Work 4A or Work 4B the creation and use of one temporary facility for the disposal of unexploded ordnance, which facility may include the installation and use of up to 2 temporary structures, insulating works to those structures which may include elements of bunding

and deposition of materials on and around the temporary structures, the installation of security fencing and the storage of waste materials from the use of the facility.

In connection with Work Nos 1A – 4F and to the extent that they do not otherwise form part of any such work, further development whether or not shown on the plan referred to in the requirements including—

- (a) bunds, embankments, landscaping, fencing and boundary treatments;
- (b) connection to the electricity network for the purposes of supply to the authorised development;
- (c) connection to the telecommunications network for the purposes of supply to the authorised development;
- (d) temporary construction site offices;
- (e) haul roads and hard standing on site for the parking of construction vehicles plant and machinery or for the vehicles of construction workers;
- (f) extraction of materials by tunnelling, boring, blasting or digging, including any minerals present, necessary to undertake the Works;
- (g) use of any materials extracted by the undertaking of the Works to form dam structures and slate mounds;
- (h) reuse of slate and organic materials arising from reprofiling or landscape works to create temporary haul roads, access tracks and compounds;
- (i) construction of temporary lay down storage areas and compounds and their restoration;
- (j) water supply works, foul drainage provision, surface water management systems, channelling and culverting;
- (k) habitat creation;
- (l) formation of permanent and temporary highways, footpaths and other means of public access including diversion and stopping up of existing routes;
- (m) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths);
- (n) works for the benefit or protection of land affected by the authorised development;
- (o) earthworks (including soil stripping and storage, site levelling) and coffer dam; and
- (p) connections between works including installation of pipework;

and to the extent that they do not form part of any such work, further development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which do not give rise to any materially new or different significant effects from those assessed in the environmental statement.

## PART 2

Article 3

### Requirements

#### Definitions

1.—(1) In this Part of this Schedule-

“CoCP” means a Code of Construction Practice incorporating the plans listed at requirement 6 (CoCP) regulating the construction of the authorised development;

“commissioning” means the process of assuring that all systems and components of the authorised development are constructed, installed, tested, and operable in accordance with the design and operational requirements of the undertaker;

“design and access statement” means the design and access statement related to the authorised development having document reference 8.03 and certified by the Secretary of State in accordance with Article 39 of this order;

“phase” means a defined phase of the construction of the authorised development, the extent of which is shown in a schedule and associated plan submitted to and approved by the relevant planning authority under requirement 4 (Phasing Plan);

“operation” means the period of time that the authorised development is in operation after construction and commissioning is complete; and

“Q1” means Quarry 1, known as Chwarel Fawr, lying within Work 1 and forming the site of the upper reservoir and dam of the authorised development;

“Q6” means Quarry 6, known as Glyn Rhonwy, lying within Work 4 and forming the site of the lower reservoir and dam of the authorised development;

“site” means land within the Order limits;

**Time limits**

2. The authorised development must be commenced within 5 years from the date on which this Order comes into force.

**Export Limit**

3. The generating station must not export at a power rate greater than 99.9MW net of any station load electrical losses

**Phasing Plan**

4.—(1) No authorised development may commence on the site until a written scheme and accompanying phasing plan setting out the extent and sequence of all the phases of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The phasing plan must include timescales for the reinstatement or restoration of temporary construction compounds in line with the provisions of the landscape and reinstatement plan, which reinstatement or restoration must commence within 4 weeks of the cessation of use of the temporary construction compound concerned.

(3) The authorised development must be constructed in accordance with the approved phasing scheme and plan.

**Detailed design**

5.—(1) Subject to sub-paragraph (2), the elements of the authorised development listed in column (2) of the table below must not exceed the maximum dimensions set out in relation to that element in columns (3) to (6) of the table—

(1) <i>Works Package number</i>	(2) <i>Element of authorised development</i>	(3) <i>Maximum height (metres)</i>	(4) <i>Maximum width (metres)</i>	(5) <i>Maximum length (metres)</i>	(6) <i>Other parameters</i>
1A	Q1 Dam	395mAOD			
1B	Q1 slate mounds				935000m <sup>3</sup> (max aggregate volume all new slate mounds) Maximum extents must be 10m away from the Nant Y Betws, 4m away from PRowS and 2m away from any other area not forming part of the Works.

(1) Works Package number	(2) Element of authorised development	(3) Maximum height (metres)	(4) Maximum width (metres)	(5) Maximum length (metres)	(6) Other parameters
1A	Q1 Scour tower	393mAOD			
1A	Q1 spillway infrastructure (Input)				800mm (Maximum pipe diameter)
1A	Q1 spillway infrastructure (output)				450mm (Maximum pipe diameter)
1A	Q1 Perimeter fencing	2			
1D	Q1 construction compounds				72,000sq.m. (Maximum (aggregate) site area of all Q1 construction compounds)
1E	Temporary car parking area				895sq.m. (Maximum site area)
1F	Permanent car parking area				1050sq.m. (Maximum site area)
2	Penstock			1800	4.5m (Maximum internal diameter)
3B	Turbine Hall				100000m3 (volume)
3A	Power House	15	27	60	
3A	Powerhouse ancillary buildings: Switchgear	10	18	30	
3A	Powerhouse ancillary buildings: GIS Substation	12	12	30	
3A	Powerhouse other permanent ancillary building	5			
3A	Power House Perimeter fencing	3			
3A	Temporary construction compound				22,000sq.m. (Maximum site area)
3B	Tailrace				4.5m (Maximum internal diameter)

(1) Works Package number	(2) Element of authorised development	(3) Maximum height (metres)	(4) Maximum width (metres)	(5) Maximum length (metres)	(6) Other parameters
3B	Temporary Construction Tunnel and shaft				4.5m (Maximum internal diameter)
4A	Q6 Dam	156mAOD			
4A	Q6 Scour tower	154.5m AOD			
4A	Q6 spillway infrastructure (Scour)				450mm (Maximum pipe diameter)
4A	Q6 spillway infrastructure (Overflow)				800mm (Maximum pipe diameter)
4A	Q6 Perimeter fencing	3			
4B	Q6 construction compound				9,000sq.m. (Maximum site area)
4E	Q6 spillway infrastructure (Abstraction)				800mm (Maximum pipe diameter)
4E	Q6 spillway infrastructure (discharge)				450mm (Maximum pipe diameter)
4F	Pumping station kiosk / control box	1.6	0.8	2	

(2) The relevant planning authority may at the request of the undertaker approve amendments to the maximum parameters listed in columns (3), (4), (5) and (6) of the tables set out in this requirement, but such approval must not be given except in relation to minor or non-material amendments which have been demonstrated to the satisfaction of the relevant planning authority as being unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

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

- (a) the layout, design, external appearance, dimensions and floor levels of all permanent buildings and above ground and below ground structures; and
- (b) the colour, materials and surface finishes of all permanent buildings and above ground structures.

(4) The details to be submitted for approval under sub-paragraph (3) must include appropriately scaled plans and sectional drawings.

(5) The details to be submitted in accordance with paragraph (3) for the phase which includes Work 3 must include a detailed description and assessment of the noise attenuation and mitigation measures relating to the turbine hall to be constructed and the turbines to be installed as part of that Work.

(6) The authorised development must be carried out in accordance with the approved plans and details and any other approvals given by the relevant planning authority pursuant to this requirement.



### **Code of construction practice**

6.—(1) No development of the site may commence until a CoCP has been submitted to and approved by the relevant planning authority in consultation (where appropriate) with Natural Resources Wales.

(2) The CoCP, which is to specify measures to mitigate the impacts of constructions works, must be substantially in accordance with the principles and restrictions set out in Appendix 16.1 of Volume 3 of the Environmental Statement, and must incorporate the following plans—

- (a) water management plan;
- (b) pollution prevention plan;
- (c) a construction traffic management plan;
- (d) dust management plan;
- (e) landscape and reinstatement plan;
- (f) construction noise management plan;
- (g) emergency response and flood risk management plan;
- (h) waste management plan;
- (i) habitat management plan;
- (j) breeding bird method statement; and
- (k) silt management plan.

(3) Plans and strategies within the CoCP are to be in accordance with the principles and restrictions set out in Appendix 16.1 of Volume 3 of the Environmental Statement, and (where appropriate) the details set out in the relevant requirements.

(4) Construction works for the authorised development must be carried out in accordance with the approved plans for that phase.

(5) Subject to the provisions of requirement 23, all construction works for the authorised development must be carried out in accordance with the approved CoCP, including any plans approved as part of it.

### **Other required plans and strategies**

7.—(1) Prior to the commencement of any development other than ground investigation or site clearance for temporary construction compounds or access works, the following plans and strategies must be submitted to and approved in writing by the relevant planning authority;

- (a) air quality baseline monitoring plan;
- (b) materials management plan;
- (c) ordnance management strategy;
- (d) archaeological compensation and enhancement strategy;
- (e) land discovery strategy;
- (f) health and safety plan;
- (g) bio security plan;
- (h) operational noise management plan.

(2) Any plan or strategy required under this requirement must include the details set out by Chapter 16 and Appendix 16.1 of the Environmental Statement.

(3) The relevant planning authority must consult Natural Resources Wales and (where relevant) Dŵr Cymru/Welsh Water on any plan or strategy submitted under this requirement prior to any approval.

(4) Subject to the provisions of requirement 23, all construction works for the authorised development must be carried out in accordance with the approved plans and strategies.

### **Water management plan**

**8.**—(1) The water management plan is to include details of the surface and foul water drainage system, including means of pollution control.

(2) The surface water drainage system must not discharge either directly or indirectly into the public sewerage system.

(3) The relevant planning authority must consult Natural Resources Wales on the contents of the proposed water management plan.

### **Construction traffic management plan**

**9.**—(1) The construction traffic management plan must include written details of the preferred route to be used by construction traffic, any traffic management required and any restrictions to be imposed.

(2) The relevant planning authority must consult the highway authority on the proposed construction traffic management plan prior to any approval being given.

(3) Notices are to be erected and maintained by the undertaker throughout the period of construction at every construction site exit, indicating to drivers the route agreed by the relevant planning authority for traffic entering and leaving the site.

### **Dust management plan**

**10.** The dust management plan must include details of the means by which failures of dust controls will be investigated and appropriate mitigation or remedial works will be implemented.

### **Noise management plans**

**11.**—(1) The construction noise management plan is to include—

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

(2) The operational noise management plan is to include—

- (a) an operational noise assessment; and
- (b) details of an operational noise assessment.

(3) Subject to requirement 23 the authorised development must be carried out and operated in accordance with the approved construction noise management plan and operational noise management plan including any measures specified in the operational noise assessment.

### **Habitat management plan**

**12.**—(1) The habitat management plan must reflect the survey results and ecological mitigation and enhancement measures included in the environmental statement.

(2) The habitat management plan is to include an implementation timetable.

(3) The habitat management plan is to include provisions concerning tree protection, tree-root protection and tree planting.

(4) The relevant planning authority is to consult Natural Resources Wales on the contents of the proposed habitat management plan prior to any approval being given.

### **Land discovery strategy**

**13.**—(1) No development of the site other than ground investigation or site clearance may commence until a land discovery strategy plan has been submitted to and approved in writing by the relevant planning authority.

(2) The land discovery strategy is to deal with the contamination of any land, including groundwater, which is likely to cause harm to persons, the environment or pollution of controlled waters; and the land discovery plan must include an investigation and risk assessment report, prepared by a competent person in accordance with the guidance document which must contain—

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

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

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

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

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

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

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

(8) The relevant planning authority is to consult Natural Resources Wales on the contents of the proposed land discovery strategy.

### **Air quality baseline monitoring plan**

**14.**—(1) The air quality baseline monitoring plan must contain details of an air quality monitoring scheme including—

- (a) The locations at which monitoring will take place;
- (b) The monitoring equipment and methods to be used;
- (c) The frequency and duration of monitoring;
- (d) The procedure for reporting the result of the monitoring; and
- (e) An environmental complaints procedure.

### **Archaeological compensation and enhancement strategy**

**15.**—(1) The archaeological compensation and enhancement strategy must include a written scheme for the investigation of areas of archaeological interest as identified in chapter 11 (cultural heritage and archaeology) of the environmental statement.

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

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

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

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

### **Construction hours**

**16.**—(1) Construction work for the authorised development must not take place on public holidays or outside the hours of—

07:00 to 19:00 on Monday to Friday, and

07:00 to 13:00 on Saturdays,

except with the prior written approval of the relevant planning authority.

(2) The relevant planning authority may extend working hours for specified activities, or elements of any phase or for specified days. Where the relevant planning authority authorises any extension for specified activities or elements of any phase then the undertaker must notify the planning authority of the commencement and completion of the specified activities or elements and following completion is to advise of the number of days where extended hours were worked for that activity or element.

(3) In extending working hours under (2) the relevant planning authority will have regard to the impact on residents and users of any land affected.

### **Construction Compound and temporary structures**

**17.**—(1) No phase of the authorised development may commence until for that phase details of the size, layout and location and external lighting of temporary buildings and structures to be formed in that phase have been submitted to and approved by the relevant planning authority in consultation with Natural Resources Wales.

(2) The temporary buildings and structures must be installed in accordance with the approved details.

(3) All temporary buildings and structures must be removed within 3 months of the cessation of construction. The sites of any temporary building or structure must be reinstated in accordance with the landscape and reinstatement plan as soon as practicable following removal.

### **Works on replacement open space (Work 1H)**

**18.** Only works which are required to comply with any requirement under this Order or any environmental licence for the authorised development are to be undertaken on Work 1H.

### **External lighting**

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

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

(3) Subject to requirement 23, the approved lighting scheme must be retained and complied with for the duration of the operation of the relevant phase of the authorised development.

### **Excess water management strategy**

**20.**—(1) Prior to the operation of the authorised development for the generation of electricity an excess water management strategy is to be submitted to and approved in writing by the relevant planning authority.

(2) The excess water management strategy is to be in accordance with the principles and restrictions set out in Appendix 16.1 of Volume 3 of the Environmental Statement.

(3) Subject to requirement 23 the authorised development must be carried out and operated in accordance with the approved excess water management strategy.

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

**21.**—(1) No phase of the authorised development may commence until details of the proposed means of enclosure for that phase which are in accordance with details described in the environmental statement have been submitted to and approved in writing by the relevant planning authority.

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

(3) Subject to requirement 23 the approved details must be complied with for the duration of the relevant phase of the authorised development.

### **Decommissioning plan**

**22.**—(1) No later than 124 years from the date upon which generation commences on the authorised development or, where use for the generation of electricity permanently ceases before that date no later than 2 months following permanent cessation of use of the authorised development, the undertaker must submit to the relevant planning authority written details of a decommissioning plan for the authorised development together with such environmental information as may be required or reasonably requested by the relevant planning authority.

(2) the undertaker must notify the relevant planning authority in writing of—

- (i) the date of commencement of generation on the authorised development; and
- (ii) the date upon which use of the authorised development ceased
- (iii) within 5 working days of the occurrence of each event.

(3) Use will be taken to have permanently ceased where:

- (i) no electricity is generated for a continuous period of 12 months unless works to repair, refurbish or maintain any part of the authorised development are ongoing, or
- (ii) the authorised development is unoccupied by the undertaker for a continuous period of 6 months.

(4) The decommissioning plan is to include a timetable for its implementation.

(5) The relevant planning authority is to consult Natural Resources Wales on the contents of the proposed decommissioning plan.

### Submission and approval of details

23.—(1) Where under any requirement details or any scheme or plan are to be submitted for the approval by the relevant planning authority then, unless the requirement provides otherwise,—

- (a) those details or scheme or plan and that approval must be in writing; and
- (b) the details, scheme or plan must be implemented as approved;

(2) The approved details, scheme or plan are to be taken to include any amendments to the approved details, scheme or plan which may subsequently be approved in writing by the relevant planning authority, provided that no amendments may be approved by the relevant planning authority where such amendments may give rise to any materially different environmental effects to those assessed in the environment statement.

## SCHEDULE 2

Article 10

### Streets subject to street works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
County of Gwynedd	Ffordd Cefn Du. Public Highway from point A to point B as shown on the access plan
County of Gwynedd	Clegir Road. Public Highway from point C to point D as shown on the access plan
County of Gwynedd	Glyn Rhonwy Industrial Estate Internal roads from point E to point F as shown on the access plan
County of Gwynedd	Llyn Padarn Public Highway from point G to point H as shown on the access plan
County of Gwynedd	Public Rights of Way 42 Waunfawr and 56 Llanberis from point I to point J as shown on the access plan
County of Gwynedd	Public Right of Way 3 Waunfawr from point B to point K as shown on the access plan
County of Gwynedd	Public Right of Way 9 Waunfawr from point L to point M as shown on the access plan
County of Gwynedd	Lôn Las Padarn from point N to point O as shown on the access plan

## SCHEDULE 3

Article 11

### Streets for which a substitute is to be provided

<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>	<i>(4)</i> <i>New Street to be substituted</i>
County of Gwynedd	Fford Cefn Du	highway shown coloured orange between points T and U on the access plan	Highway shown coloured turquoise between points T and U on the access plan
County of Gwynedd	Public Rights of Way 42 Waunfawr 56 Llanberis	shown with a dashed brown line between points I and J on the access plan	Footpath shown coloured green between parts I and J on the access plan
County of Gwynedd	Public Right of Way 9 Waunfawr	shown as a dashed purple line between points L and W on the access plan	Footpath shown coloured green between points L and P on the access plan
County of Gwynedd	Informal footpath	shown with a dashed purple line between points L and V and on the access plan	Footpath shown coloured green between points L and P on the access plan
County of Gwynedd	Public Right of Way 3 Waunfawr	Between points X and Y as shown with a dashed brown line on the access plan	Footpath shown with a dashed turquoise line between points B and Y on the access plan

## SCHEDULE 4

Article 13

### Streets to be temporarily stopped up

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County of Gwynedd	Fford Cefn Du	Between points A and T, and U and B as shown coloured blue on the access plan
County of Gwynedd	Clegir Road	Between points C and D as shown on the access plan
County of Gwynedd	Glyn Rhonwy Industrial Estate Internal Road.	Between points E and F as shown on the access plan

County of Gwynedd

Public Right of Way 9  
Waunfawr

Between points M and U as  
shown on the access plan

## SCHEDULE 5

Article 14

### Access to works

<i>(1)</i> Area	<i>(2)</i> Description of access
County of Gwynedd	Fford Cefn Du public highway from A to B as shown on the access plan.

## SCHEDULE 6

Article 22

### Land in which only new and existing rights etc. may be required

<i>(1)</i> Number of land shown on land plan	<i>(2)</i> Purpose for which rights or existing rights may be acquired
Plot 22	(a) right to occupy and interfere with the surface for the purposes of undertaking ground and site investigation works, including trial pits and boreholes; (b) rights to install, operate, access and maintain underground pipework including the penstock and any apparatus placed therein; and (c) right to take access over the land for the purposes of constructing, maintaining and decommissioning the authorised development.
Plot 41	(a) right to occupy and use the land for the purposes of creating and using compounds, laydown areas and storage areas, the installation and use of temporary structures and plant and the erection of fencing all during construction, maintenance works and decommissioning; and (b) right to take access over the land for the purposes of constructing, maintaining and decommissioning the authorised development.
Plot 63	(a) rights to form, maintain, use, and remove a road and any ancillary infrastructure (including drainage and signage) suitable



Plot 71

- for use by pedestrian and vehicular traffic;
- (b) rights to make the road available for use by the public; and
- (c) right to take access over the land for the purposes of constructing, maintaining and decommissioning the authorised development.
- (a) rights to form, maintain, use, and remove a road and any ancillary infrastructure (including drainage and signage) suitable for use by pedestrian and vehicular traffic;
- (b) rights to make the road available for use by the public; and
- (c) right to take access over the land for the purposes of constructing, maintaining and decommissioning the authorised development.

## SCHEDULE 7

Article 22(5)

### Modification of compensation and compulsory purchase enactments for creation of new rights

#### Compensation enactments

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

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

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

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

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

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

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(a) 1973 c.26

- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

### **Application of the 1965 Act**

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

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

(2) Without prejudice to the generality of sub-paragraph (1), Part I of the 1965 Act is to apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

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

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

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

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

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

the Glyn Rhonwy Pumped Storage (Generating Station) Order 201[X] (a) (“the Order”) will, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is to be deemed to have been served in respect of that interest on such date as the Tribunal directs.

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

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(a) S.I.201[X]

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

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

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

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

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

**8.** Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

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

## SCHEDULE 8

Article 36

### Protection for electricity, gas, water and sewerage undertakers and public communication providers

**1.** For the protection of the utility undertakers referred to in this Schedule the following provisions are, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned, to have effect.

**2.** In 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 utility undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989)(a), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas utility 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 utility undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply;
- (d) in the case of public communications providers means cables, wires, lines and similar apparatus relating to that provider; and
- (e) in the case of a sewerage utility undertaker
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); 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 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;

“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

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

“utility undertaker” means—

- (f) any licence holder within the meaning of Part I of the Electricity Act 1989;
- (g) a gas transporter within the meaning of Part I of the Gas Act 1986(a);
- (h) a water utility undertaker within the meaning of the Water Industry Act 1991; and
- (i) a sewerage utility undertaker within the meaning of Part I of the Water Industry Act 1991,

public communications provider has the same meaning as in section 151(1) of the Communications Act 2003.

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 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 any provision in this Order or anything shown on the land plans, the undertaker may not acquire any apparatus otherwise than by agreement.

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

**(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

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(a) 1989 c.29.  
 (b) 1991 c.56.

in that land, it 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 its best 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 Schedule is to 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 41 (arbitration).

(5) The utility undertaker in question will, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41 (arbitration), 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 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 of the undertaker, that work, instead of being executed by the utility undertaker, will 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 filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**6.—**(1) Where, in accordance with the provisions 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 will 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 41 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—

- (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 or the land for which the alternative apparatus is to be substituted.

(3) 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 may 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.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed. Any submission must note the time limits imposed on the utility undertaker under sub-paragraph 7(3) below.

(2) Those works shall 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 securing access to it, and the utility undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) shall 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 6 will apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph shall preclude 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 shall 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.

8.—(1) Subject to the following provisions of this paragraph, the undertaker will 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 connection.

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

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

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 41 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(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) 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 the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**9.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(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 the undertaker is to—

- (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, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

## SCHEDULE 9

Article 4(2)

### Discharge of requirements

#### **Applications made under requirements**

**1.** Where an application has been made to the relevant planning authority for any agreement or approval required pursuant to a requirement included in this Order, the relevant planning authority must give notice to the undertaker of their decision, including the reasons, on the application, within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) such longer period as may be agreed by the undertaker and the relevant planning authority.

## Further information

2.—(1) Where an application has been made under paragraph 1 the relevant planning authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 14 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement indicates the consultation must take place with a consultee the relevant planning authority must issue the consultation to the requirement consultee within 5 business days of receipt of the application and must notify the undertaker in writing specifying any further information requested by the consultee within 3 business days of receipt of such a request and in any event within 21 business days of receipt of the application.

(4) In the event that the relevant planning authority does not give such notification as specified in sub-paragraph (2) or (3) it is 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.

## Fees

3.—(1) Where an application is made to the relevant planning authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (a)(or any regulations replacing the same) is to be paid by the undertaker to the relevant planning authority in accordance with these regulations.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the period determined under paragraph (1);
- (c) unless within that period the undertaker agrees in writing that the fee is to be retained by the relevant planning authority and credited in respect of a future application.

## Appeal

4.—(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; or
- (b) the relevant planning authority does not give notice of its decision to the undertaker within the time period specified in paragraph 1.

(2) The provisions of Sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions) applies to any appeal under sub-section (1) as if the requirement concerned was a condition imposed on a grant of planning permission.

## Interpretation of Schedule 9

5. In this Schedule—

“business day” means a day other than 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(b);

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(a) SI 2015/1522

(b) 1971 c.80



“requirement consultee” means anybody 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 Snowdonia Pumped Hydro Limited to construct operate and maintain a pumped storage electricity generation station at Llanberis, North Wales.

For the purposes of the development that it authorises, Snowdonia Pumped Hydro Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights.

The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 39 (certification of plans, etc.) of this Order may be inspected free of charge at the offices of Gwynedd Council at Council Headquarters, Cast Street, Caernarfon, LL55 1SE.