

Deadline 5 – Table of DCO amendments



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<b>Authors</b>	BURGES SALMON LLP	
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Table of DCO Amendments requested - Submitted for Deadline 5

This table lists the changes sought to the DCO from Revision 5 to Revision 6A submitted for Deadline 5.

1. Changes requested by the Examining Authority in second written questions

	<b>Question</b>	<b>Article/ Requirement</b>	<b>Question/Query/Action point</b>	<b>Applicant response</b>
1.1	1.1	General	Should the use of the terms 'paragraph' and 'sub-paragraph' (sometimes referred to as 'subparagraph') be reviewed to ensure accuracy and consistency when used in the draft DCO [REP4-009]? For example, 'paragraph' is generally used as the first sub-division of an Article or Requirement and 'sub-paragraph' as the second sub-division. However in a number of cases references to 'paragraph' refer to the Article or Requirement (in Article 19(3)(a), for example) and in others to a 'sub-paragraph' (in Article 9(1), for example). Similarly 'subsection' has been used instead of 'sub-paragraph' (in Requirement 9(8), for example).	The Applicant has reviewed the draft and made a number of changes.
1.2	1.2	Article 2(1) – definition of 'maintain'	Does this definition need to be updated further to the discussions between the applicant and Gwynedd Council [REP4-016, item 1.1] regarding Requirement 25 (annual maintenance plans)?	The Applicant does not consider that any amendment to the definition is required by the introduction of the Requirement.

1.3	1.3	Article 13 - temporary prohibition and restriction of streets	Should this be titled 'temporary prohibition and restriction of use of streets'?	The Applicant has amended the title as follows:  <b>Temporary prohibition and restriction of <u>use of streets</u></b>	
1.4	1.4	Article 19 – compulsory acquisition of land	Given the earlier definition of 'the access land', should the text 'the plot of' be deleted from Article 19(3)(c)?	The Applicant has amended Article 19(1)(c) as follows:  The date referred to in sub-paragraph (b) of this paragraph is the date on which the <del>plot of the</del> access land is vested in the undertaker;	
1.5	1.5	Schedule 1 Part 1 – authorised development	Should Work No 4G, which is indicated on the Works Plans [REP1-006], be included in this schedule?	The Applicant has inserted work 4G as follows:  <a href="#">Work No 4G – stabilisation of quarry edge.</a>	
1.6	1.6	Schedule 1 Part 1 – authorised development	In order to further improve the definition of the authorised development please could the applicant allocate each of the 'further development' items (a) to (j) in the draft DCO [REP4-009, Schedule 1, Part 1] to specific Work Nos?	The Applicant has added the further development items to the table as follows:	
				<a href="#">Bunds, embankments, landscaping, fencing and boundary treatments</a>	<a href="#">All works</a>
				<a href="#">Connection to the electricity network for the purposes of supply to the authorised development</a>	<a href="#">Works 3A, 3B, 4D</a>
				<a href="#">Connection to the telecommunications network for the purposes of supply to the authorised development</a>	<a href="#">Works 3A, 3B, 4D</a>
				<a href="#">Water supply works, foul drainage provision, surface</a>	<a href="#">All</a>

				<a href="#">water management systems, channelling and culverting</a>	
				<a href="#">Habitat creation</a>	All works
				<a href="#">Formation of permanent and temporary highways, footpaths, and other means of public access including diversion and stopping up of existing routes;</a>	<a href="#">Works 1C, 1E, 1F, 2, 4D, 4E, 4F</a>
				<a href="#">Site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths)</a>	All Works
				<a href="#">Works for the benefit or protection of land affected by the authorised development</a>	All Works
				<a href="#">Earthworks (including soil stripping and storage, site levelling) and coffer dam</a>	<a href="#">Works 1A to 1G inclusive, 3, 4A to 4G inclusive</a>
				<a href="#">Connections between works including installation of pipework</a>	<a href="#">Works 3A, 3B, 4A</a>
1.7	1.7	Schedule 1 Part 1 – authorised development	a) In order to further improve the definition of the works please could the applicant clarify the ‘further development’ referred to in the last 4 lines to indicate the type and extent of the other works that may be included?	No change has been made. As the Applicant has previously noted this is intended to cover the minor, ancillary operations necessary to carry out the works and which are not usually listed in detail. Consent is normally worded to grant the product of development, not every individual operation necessary to achieve it. The Applicant considers it	

				impractical to try and list of these matters, furthermore it is not feasible to do so precisely before the detailed design has been finalised.
1.8	1.13	Requirement 8 – compliance with outline plans	<p>a) Should the ‘<i>outline plans</i>’ be named as such in Article (38)?</p> <p>b) Would it help to avoid confusion if it was made specific that each plan is required to comply with the provisions and address all of the matters in its corresponding outline plan?</p>	<p>a) The Applicant has made the following additions to the list in article 38:</p> <ul style="list-style-type: none"> <li><a href="#">g) the outline water management plan;</a></li> <li><a href="#">h) the outline pollution prevention plan;</a></li> <li><a href="#">i) the outline construction traffic management plan;</a></li> <li><a href="#">j) the outline dust management plan;</a></li> <li><a href="#">k) the outline landscape and reinstatement plan;</a></li> <li><a href="#">l) the outline emergency response and flood risk management plan;</a></li> <li><a href="#">m) the outline waste management plan;</a></li> <li><a href="#">n) the outline habitat management plan;</a></li> <li><a href="#">o) the outline breeding bird method statement;</a></li> <li><a href="#">p) the outline silt management plan;</a></li> <li><a href="#">q) the outline air quality baseline monitoring plan;</a></li> <li><a href="#">r) the outline materials management plan;</a></li> <li><a href="#">s) the outline ordnance management strategy;</a></li> <li><a href="#">t) the outline archaeological compensation and enhancement strategy;</a></li> <li><a href="#">u) the outline land discovery strategy;</a></li> <li><a href="#">v) the outline health and safety plan;</a></li> <li><a href="#">w) the outline bio security plan;</a></li> <li><a href="#">x) the outline operational noise management plan;</a></li> </ul> <p>and</p> <p>b) The Applicant has expanded the list in requirement 8 as follows:</p> <ul style="list-style-type: none"> <li><a href="#">(a) water management plan;</a></li> <li><a href="#">(b) pollution prevention plan;</a></li> </ul>

				<p>(c) <a href="#">a construction traffic management plan;</a></p> <p>(d) <a href="#">dust management plan;</a></p> <p>(e) <a href="#">landscape and reinstatement plan;</a></p> <p>(f) <a href="#">construction noise management plan;</a></p> <p>(g) <a href="#">emergency response and flood risk management plan;</a></p> <p>(h) <a href="#">waste management plan;</a></p> <p>(i) <a href="#">habitat management plan;</a></p> <p>(j) <a href="#">breeding bird method statement;</a></p> <p>(k) <a href="#">silt management plan;</a></p> <p>(l) <a href="#">air quality baseline monitoring plan;</a></p> <p>(m) <a href="#">materials management plan;</a></p> <p>(n) <a href="#">ordnance management strategy;</a></p> <p>(o) <a href="#">land discover strategy;</a></p> <p>(p) <a href="#">health and safety plan;</a></p> <p>(q) <a href="#">operational noise management plan and</a></p> <p>(r) <a href="#">bio security plan.</a></p>
1.9	1.17	Requirement 11(2) – drainage	<p>a) Replace '<i>can</i>' with '<i>is to</i>'?</p> <p>b) What does '<i>the following</i>' refer to?</p>	<p>The drainage requirement (now numbered 10) sub-paragraph 2 has been amended as follows:</p> <p>No commencement of development of any permanent buildings <del>can</del><a href="#">is to</a> be undertaken until written details <a href="#">permanent surface and foul water drainage systems including means of pollution control</a> have been submitted to and approved by the relevant planning authority</p>

1.10	1.18	Requirement 11(3) – drainage	Should this refer to the ‘permanent drainage system’?	<p>The drainage requirement (now numbered 10) subparagraph 3 has been amended as follows:</p> <p>The relevant planning authority must consult Natural Resources Wales <a href="#">and Dwr Cymru</a> on the contents of the proposed permanent drainage <a href="#">system</a> for the authorised development.</p>
1.11	1.19	Requirement 14(2)	What is the difference between ‘an operational noise assessment’ and ‘details of an operational noise assessment’?	This requirement has now been deleted, this deletion is explained in detail at 3.2 below.
1.12	1.20	Requirement 18 – archaeological compensation and enhancement strategy	Should the term ‘site wide written scheme’ be used in paragraph (1) as well as paragraph (5)?	This requirement has now been deleted, this deletion is explained in detail at 3.2 below.
1.13	1.21	Requirement 19(3) – construction hours	Replace ‘will’ with ‘must’?	<p>The requirement referred to is now numbered 12, Applicant has made the change requested to requirement 12 (3) as follows:</p> <p>In extending working hours under (2)(b) the relevant planning authority <del>will</del><a href="#">must</a> have regard to the impact on residents and users of any land affected</p>
1.14	1.24	Requirement 24(2) – fencing	Replace ‘agreed’ with ‘approved’?	<p>The requirement referred to is now numbered 17, Applicant has made the change requested to requirement 17(2) as follows:</p> <p>The means of enclosure <del>agreed</del><a href="#">approval</a> under subparagraph (1) must be erected prior to the commissioning of the relevant phase of the authorised development.</p>



1.15	1.26	Requirement 26(1) – decommissioning plan	Replace ‘following permanent cessation’ with ‘following the expiry of that period or following permanent cessation’?	The Applicant considers the suggested change makes the requirement less clear and has not made the amendment.
1.16	1.27	Requirement 26(1) – decommissioning plan	Requirement 26(1) – decommissioning plan Should (2)(iii) be at the same level as (2)?	The Applicant has amended the level to (2).
1.17	1.28	Schedule 8, paragraph 3(1) – provision of information by Consultees	Should the text ‘Unless sub paragraph (2) of this paragraph applies’ be at the start of paragraph 3(1)?	The Applicant has amended the sub-paragraph as follows:  <del>Any</del> <u>Unless sub-paragraph (2) of this paragraph applies any</u> consultee who receives a consultation under <u>sub-paragraph 2(3)</u> must respond to that request within <u>2128</u> days from receipt. <del>Unless sub paragraph (2) of this paragraph applies.</del>
1.18	1.29	Schedule 8, paragraph 4(1)	Replace ‘these’ with ‘those’?	The Applicant has amended the sub-paragraph as follows:  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 (or any regulations replacing the same) is to be paid by the undertaker to the relevant planning authority in accordance with <del>these</del> <u>those</u> regulations.

1.19	1.30	Schedule 8, sub-paragraph 4(2)(c)	Should 4(2)(c) be at the same level as 4(2) and not the same level as (a) and (b), as it is text that governs both 4(2)(a) and (b)?	The Applicant has amended the level.
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Representations with respect to DCO changes

<b>2. Natural Resources Wales</b>					
	<b>Date of Representation</b>	<b>Section/paragraph</b>	<b>Comment</b>	<b>Consultee proposed revision</b>	<b>Applicant's Response</b>
2.1	13th May 2016 Written submission was made prior to the Issue Specific Hearing	11.2	NRW need to be consulted by the Local Planning Authority on requirement 22, the Excess Water Management Strategy. We requested this inclusion within our Deadline 1 response dated 30th March 2016, but this request has not been included within the latest revision of the draft DCO.	-	The Applicant has amended the requirement (now numbered 16) as follows:  (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- <a href="#">in consultation with Natural Resources Wales.</a>
2.2	13th May 2016 Responses to Issue Specific Hearing on the draft DCO held on the 18 <sup>th</sup> May 2016	5	Article 6 (power to deviate) The Examining Authority's proposed wording is acceptable provided that the limits of deviation are clearly delineated on the relevant plans		No change made. The Applicant does not consider that further control beyond Article 6 as drafted is required, or that this type of additional provision adds anything useful and could, in fact, be confusing.
2.3	13th May 2016 Responses to Issue Specific Hearing on	29	Requirement 8 (Water Management Plan) NRW is satisfied with the		The Applicant accepts the insertion to the sampling suite parameters, however the Applicant considers

	<p>the draft DCO held on the 18th May 2016</p>		<p>wording of this requirement, subject to the following:          Requirement 8 (4) – the list of sampling suite parameters should include ‘turbidity (measured in Nephelometric Turbidity Units NTUs)’.</p> <p>Requirement 8 (5) (i) and (ii) – The stipulated timescales should be amended to ‘12 months’</p> <p>Requirement 8 (8) – Reference to ‘<i>subsection 6</i>’ is incorrect. This should read ‘<i>subsection 7</i>’</p> <p>Requirement 8 (9) – Reference to ‘<i>subsection 7</i>’ is incorrect. This should read ‘<i>subsection 8</i>’</p>		<p>that the 12 month monitoring period should only apply to surface water, not all monitoring. The Applicant has amended the requirement (now numbered 9) as follows:</p> <p>9(4) The sampling suite should consider the following parameters as a minimum: Total and dissolved metals, electrical conductivity, pH, suspended solids, chemical oxygen demand (COD), <del>and</del> biochemical oxygen demand (BOD<sub>5</sub>) <u>and turbidity (measured in Nephelometric Turbidity Units (NTUs)).</u></p> <p>9(5) Water quality monitoring will be undertaken by the undertaker <u>at locations approved in advance in writing by the relevant planning authority in consultation with NRW</u> for the following periods as a minimum:  <u>for private water supplies; once a month for a minimum of {6} months</u> prior to the start of any construction works of the authorised development; <u>where access to such supplies is granted; for surface water, once a month for a minimum of 12 months prior to the start of any construction works of the authorised development; and</u> throughout the construction programme and for a minimum of</p>
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					<p><del>[6]</del> months post completion; <del>and</del>.</p> <p>9(8) The undertaking of and outcome of any review under subsection <del>6</del><u>7</u> shall be notified to the relevant planning authority in writing within 7 days of the completion of the review. Such notice must specify whether the undertaker considers an amendment of the plan is required.</p> <p>9(9) Where, having considered the notice of review under subsection <del>7</del><u>8</u>, the relevant planning authority considers that an amendment is required the relevant planning authority may notify the undertaker within <del>[7]</del> working days of receipt of the notice of review.</p>
2.4	13th May 2016 Responses to Issue Specific Hearing on the draft DCO held on the 18th May 2016	30	<p>Requirement 9 (Silt Management Plan) Requirement 9(1) (i) and (ii) - this appears to be a duplication. The applicant should clarify how these provisions are different in respect of pollution control measures. Requirement 9 (2) – Reference to the water management plan is unnecessary as the</p>		<p>This requirement has now been deleted, this deletion is explained in detail at 3.2 below.</p>

			provisions are secured under Requirement 8		
2.5	13th May 2016 Responses to Issue Specific Hearing on the draft DCO held on the 18th May 2016	31	<p>Requirement 10 (Drainage)</p> <p>Requirement 10 (2) – the ‘written details’ referred to have not been provided.</p> <p>Requirement 10 (3) –, the sewerage undertaker (Dwr Cymru) should also be consulted if the foul drainage is to be connected to the public sewer.</p>		<p>The Applicant has amended requirement 10 as follows:</p> <p><b>Drainage</b></p> <p>10 —(1) The surface water drainage system must not discharge either directly or indirectly into the public sewerage system.</p> <p>(2) <u>No commencement of development of any permanent buildings canis to</u> be undertaken until written details <u>permanent surface and foul water drainage systems including means of pollution control and details of the following operational phase water quality monitoring</u> have been submitted to and approved by the relevant planning authority</p> <p>(3) The relevant planning authority must consult Natural Resources Wales <u>and Dwr Cymru</u> on the contents of the proposed permanent drainage <u>system</u> for the authorised development.</p>
2.6	13th May 2016 Responses to Issue Specific Hearing on the draft DCO held on the 18th May 2016	Schedule 8 (Discharge of Requirements)	The Statement of Common Ground between the applicant and NRW details at 5.1.2 that the provisions of the draft DCO relating to the Discharge of Requirements are agreed between the applicant and	It is suggested that the wording should be amended as follows ‘Where the consultee requires further information it must notify the relevant planning authority in writing specifying the further information required within a	The Applicant notes NRW’s concern that the time period may be insufficient but considers that the proposed change to an unspecified timescale is contrary to the objective of the changes made which were to provide clear and

			<p>NRW. This was based upon the applicant's revision 3 to the draft DCO, with the provisions in question detailed under Schedule 9. However, the applicant has issued a further revision to the draft DCO (revision 4) incorporating substantive amendments to the Schedule (which has been re-numbered, now being Schedule 8).</p> <p>The amendment to paragraph 2(3) relates to 'reasonable further information' required by the relevant planning authority and provides that NRW upon being consulted must notify the relevant planning authority in writing within 5 business days specifying the further information required. This amendment is not acceptable to NRW in the absence at this time of further details of the nature and complexity of the information in question. Accordingly, NRW may not be in a position to provide such response within the stipulated timeframe.</p>	<p>reasonable timescale following receipt of consultation'</p>	<p>certain timescales. As however NRW have advised that they may not be able to do this within the timeframe the Applicant has amended the time stipulate to 21 days to allow a longer period for NRW to establish if further information is required. Schedule 8 sub-paragraph 2(3) has been amended as follows:</p> <p>(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 <del>35</del> business days of receipt of the application <u>and in any event within 28 days of receipt of the application</u>. Where the consultee requires further information they must notify the relevant planning authority in writing specifying the further information required within <del>5 business</del><u>21</u> days of receipt of the consultation. The relevant planning authority- must notify the undertaker in writing specifying any further information requested by the consultee within 3 business days of receipt of such a request.. In the event the consultee does not require any further information, then they must respond to the consultation within <del>21</del><u>28</u> days from</p>
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					receipt of the consultation notification from the relevant planning authority.
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<b>3. The Applicant's changes</b>			
	Article/ Requirement	Reason for change	Change
3.1	General	Typographical changes	Deletion of erroneous capital letters, other minor typographical amendments made throughout.
3.2	Schedule 1, Part 2 Requirements	As the outline plans specifying the minimum contents of each plan are to be certified documents and compliance with such outline plans is secured by requirement 5 the requirements setting out the contents of plans have become unnecessary as they repeat in less detail the information given in the certified outline plans. They have accordingly been deleted. Requirement 9 (water management plan) has been retained as it includes provisions and wording agreed with NRW which goes beyond the plan content.	Requirements relating to the contents of individual plans (10, 12, 13, 14, 15, 16, 17 and 18) have been deleted.  Consequential renumbering of requirements and amendment to references throughout.

3.3	Schedule 7	<p>Following agreement with Dwr Cymru (Welsh Water) bespoke protective provisions for the protection of their apparatus have been agreed. Schedule 7 has been renumbered as Part 1 and a new Part containing the bespoke provisions has been inserted.</p>	<p>Amendment to reference in Part 1 from Schedule to Part.</p> <p>Insertion of new paragraph 11 of Part 1 of Schedule 7 as follows:</p> <p><a href="#">Nothing in this Part shall apply to Dwr Cymru Cyfyngedig (Welsh Water) to whom the provisions of Part 2 will apply.</a></p> <p>Creation of Part 2 of Schedule 7 as follows:</p> <p><a href="#">PART 2</a></p> <p><a href="#">PROTECTION FOR DWR CYMRU CYFYNGEDIG (DCC)</a></p> <p><a href="#">1. For the protection of DCC referred to in this Part 2 of Schedule 7, the following provisions shall, unless otherwise agreed in writing between the undertaker and DCC, have effect.</a></p> <p><a href="#">2. In this Part of this Schedule:</a></p> <p><a href="#">“accessories” has the same meaning as that set out in section 219 WIA 1991 but shall also include any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;</a></p> <p><a href="#">“DCC apparatus” means all apparatus or accessories vested in or belonging to DCC for the purpose of carrying on its statutory undertaking including reservoirs, water treatment works and waste water treatment works;</a></p> <p><a href="#">“clearance area” means the area of land:</a></p> <p><a href="#">(a) within 3 metres either side of the centre line of any public sewer or public water</a></p>
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			<p><u>main that is less than 300mm in diameter;</u></p> <p><u>(b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is 300mm in diameter or more; or</u></p> <p><u>“DCC” means Dŵr Cymru Cyfyngedig, a limited company registered in Wales under Company No. 2366777 and having its registered office at Pentwyn Road, Nelson, Treharris, Mid Glamorgan CF46 6LY or its properly authorised agents or sub-contractors;</u></p> <p><u>“draft specification” means a detailed plan, cross- section and description of the works to be prepared by the undertaker (including, without limitation, a method statement and risk assessment setting out the intention in respect of the works, construction methods and programmes, position of the affected DCC apparatus and intended works and a statement that to the best of the undertaker’s knowledge, and having used all reasonable care and skill to plan the works, the works shall not cause damage to the DCC apparatus);</u></p> <p><u>“functions” has the same meaning as in section 219 WIA 1991 and includes powers and duties;</u></p> <p><u>“in” in a context referring to DCC apparatus in land includes a reference to DCC apparatus under, over or upon land; and</u></p> <p><u>“sustainable drainage system” means any structure designed to receive rainwater and other surface water which structure shall include any feature or aspect of design that is intended to receive or facilitate the receipt of rainwater except a public sewer or a natural watercourse;</u></p>
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		<p><u><a href="#">“WIA 1991” means the Water Industry Act 1991 c.56 as amended;</a></u></p> <p><u><a href="#">“works” means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are near to, or will or may in any way affect any DCC apparatus together with all ancillary actions relating hereto; and</a></u></p> <p><u><a href="#">for the avoidance of doubt, all other terms are as defined in Part 1 of this Schedule or Article 2 of this Order.</a></u></p> <p><u><a href="#">3.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Schedule.</a></u></p> <p><u><a href="#">(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DCC's rights to access DCC apparatus or accessories but subject always to paragraphs 7 and 8 of this Part and to the undertaker giving DCC 28 days notice of such interference.</a></u></p> <p><u><a href="#">Precedence of the WIA 1991</a></u></p> <p><u><a href="#">4.—(1) Regardless of any provision of this Order and this Schedule the undertaker shall comply fully with all provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus and nothing in this Order shall release the undertaker from the</a></u></p>
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			<p><a href="#">requirement to comply with the provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus, including without limitation:</a></p> <p>(a) <a href="#">sections 41-44 of the WIA 1991 in respect of water main requisitions;</a></p> <p>(b) <a href="#">section 45 of the WIA 1991 in respect of any connections to a water main;</a></p> <p>(c) <a href="#">sections 98-101 of the WIA 1991 in respect of sewer requisitions;</a></p> <p>(d) <a href="#">section 102 of the WIA 1991 in respect of the adoption of sewers and disposal works;</a></p> <p>(e) <a href="#">section 104 of the WIA 1991 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;</a></p> <p>(f) <a href="#">sections 106 to 109 of the WIA 1991 (inclusive) in respect of any connections to public sewers;</a></p> <p>(g) <a href="#">section 111 of the WIA 1991 in respect of the restrictions on use of public sewers;</a></p> <p>(h) <a href="#">sections 158 and 159 of the WIA 1991 in respect of statutory rights of access to DCC apparatus;</a></p> <p>(i) <a href="#">section 174 of the WIA 1991 in respect of offences of interference with works etc;</a></p> <p>(j) <a href="#">section 178 of the WIA 1991 in respect of obstruction of sewerage works etc;</a></p> <p>(k) <a href="#">section 185 of the WIA 1991 in respect of the removal, diversion or</a></p>
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			<p><u>alteration of DCC apparatus.</u></p> <p><u>(2) The arbitration provisions at article 20 of this Order shall not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.</u></p> <p><u>Protection of DCC apparatus</u></p> <p><u>5.—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DCC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 4(k), the undertaker shall submit to DCC written notice together with a draft specification. For the purposes of preparing the draft specification DCC will, following a written request and subject to such reasonable conditions as may be imposed, provide the undertaker with copies of such plans and records of its apparatus as may be held by DCC, at the undertaker's cost.</u></p> <p><u>(2) DCC shall examine the draft specification submitted under sub-paragraph 5(1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph 5(2) shall be repeated where those amendments are not accepted). For the avoidance of doubt, DCC's proposed amendments may include such reasonable requirements for the alteration (including but not limited to the extension of DCC apparatus) or otherwise for the protection of DCC apparatus, or for securing access to it. Reasonable requirements in this paragraph may include the imposition of conditions relating to any specification detailing:</u></p>
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		<p><u>(a) the commencement date and completion date of the specified works;</u></p> <p><u>(b) the reasonable removal, extension or alteration of apparatus necessitated by the specified works</u></p> <p><u>(c) works for the protection of apparatus necessitated as a result of the specified works;</u></p> <p><u>(d) provision for access to any apparatus; and</u></p> <p><u>(e) an advance warning system providing for liaison between the undertaker and DCC in respect of potential performance operational issues affecting, or damage to, apparatus arising from the specified works.</u></p> <p><u>(3) Once approved under sub-paragraph 5(2), the draft specification shall become the specification and the works shall be executed only in accordance with the specification and such reasonable requirements as may be made in accordance with sub paragraph 5(2) and DCC shall be entitled to watch and inspect the execution of those works.</u></p> <p><u>(4) Nothing in this paragraph 5 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 draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 5 shall apply to and in respect of the new draft specification.</u></p> <p><u>(5) The undertaker shall not be required to comply with sub-paragraph 5(1) in a case of emergency provided it has complied with paragraph 8 below save that the undertaker shall comply with sub-paragraphs 5(1) and (3) above in so far as is</u></p>
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		<p><u>reasonably practicable in the circumstances.</u></p> <p><u>(6) DCC may opt to carry out any temporary and/or protective works specified under sub-paragraph 5(2) to DCC apparatus, and if DCC opts to do so it shall:</u></p> <p><u>agree the scope and timings of the works with the undertaker (and the undertaker shall not unreasonably withhold or delay its agreement to the same);</u></p> <p><u>(a) _____ provide an invoice together with supporting evidence of the estimated costs of the works on the basis of which it shall agree with undertaker the reasonable costs of the works to be met by the undertaker;</u></p> <p><u>(b) _____ following agreement and payment of the costs, DCC shall as soon as reasonably practicable carry out and complete the works; and</u></p> <p><u>(c) _____ notify the undertaker immediately in writing upon completion of the temporary and/or protective works.</u></p> <p><u>(7) Only those contractors that satisfy DCC's reasonable health &amp; safety requirements are permitted to make openings into and/or connections with and/or carry out any works on or within any public sewer or drain vested in DCC unless otherwise agreed with DCC.</u></p> <p><u>(8) Only DCC is permitted to make openings into and/or connections with and/or carry out any works on or within any public water main vested in DCC unless otherwise agreed with DCC.</u></p> <p><u>(9) Where DCC apparatus will be affected by the works the undertaker must determine the exact location of DCC apparatus prior to any works being carried out</u></p>
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			<p><u>by the undertaker and the undertaker should contact DCC where trial holes are required at the undertaker's expense.</u></p> <p><u>(10) Any affected DCC apparatus which is no longer required by DCC but is not removed shall be transferred to the undertaker by way of a deed of transfer from DCC at the undertaker's expense and on such terms as DCC reasonably requires.</u></p> <p><u>Suspension of works</u></p> <p><u>6.—(1) DCC shall be entitled to instruct the undertaker to suspend the works if in DCC's reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DCC apparatus and/or are likely to cause or result in damage to any DCC apparatus and/or have caused or are likely to cause damage to the environment arising as a result of damage to DCC apparatus. In the event of such instruction being given by DCC:</u></p> <p><u>(2) the undertaker shall procure that it and its contractor(s) and subcontractor(s) shall forthwith suspend or cease the works having due regard to health and safety factors and shall discuss and agree with DCC the remedial actions required prior to resuming the works;</u></p> <p><u>(3) the undertaker and DCC shall act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;</u></p> <p><u>(4) DCC shall submit to the undertaker within 5 days following the suspension, a written notice specifying the reasons for suspending the works;</u></p> <p><u>(5) in the event that DCC fails to supply the written notice within 5 days of suspension DCC's instruction to suspend the works shall be void and the</u></p>
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		<p><u>undertaker shall be entitled to recommence the works; and</u></p> <p><u>(6) DCC shall commence, carry out and complete any remedial works pursuant to sub-paragraph 6(2), as soon as reasonably practicable and DCC shall give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker shall be entitled to resume the works.</u></p> <p><u>(7) DCC shall be entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 6.</u></p> <p><u>Co-Operation</u></p> <p><u>7.—(1) In the event that either the undertaker or DCC (for the purpose of this paragraph 7 “the party” or together “the parties”) wishes to take any action which would impact on the ability of the undertaker to carry out the development or DCC to carry out its statutory functions, the parties shall use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party’s works. In respect of the references to ‘work’ and ‘works’ in this sub-paragraph 7(1), to the extent that this refers to ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 2 of this Part does not apply.</u></p> <p><u>(2) Subject to paragraph 8, differences or disputes arising between the undertaker and DCC under this Schedule shall, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 40 (arbitration) of the Order.</u></p>
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			<p><u>Emergency Works</u></p> <p><u>8.—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works. For the avoidance of doubt, in the event that DCC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 9 shall apply.</u></p> <p><u>(2) DCC shall at all times be permitted to carry out any emergency works in relation to its DCC apparatus within the Order Limits in accordance with Part II Schedule 6 WIA 1991.</u></p> <p><u>(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph 8(2) shall take precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker shall reschedule its works accordingly.</u></p> <p><u>(4) In respect of the references to ‘work’ and ‘works’ in this paragraph 8, to the extent that this is ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 2 of this Part does not apply.</u></p> <p><u>Damage to DCC apparatus</u></p> <p><u>9.—(1) Subject to sub-paragraphs 9(3), (4) (5) and (6), the undertaker shall indemnify and hold harmless DCC against all claims demands costs damages expenses penalties and losses which DCC may have or sustain or become liable for in consequence of works under paragraph 5(1) to this Part in respect of:</u></p>
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		<p><u>(a) the commencement, carrying out, execution or retention of the works or any breach of this Part relating to the performance of the works and shall pay compensation for loss, damage or injury caused by the actions or default of the undertaker, its contractors, subcontractors, licencees, agents and invitees relating to the performance of the works; and</u></p> <p><u>(b) Damage to the environment caused by the undertaker during any works including but not limited to pollution and/or contamination; and</u></p> <p><u>(c) any breach of any stipulation or otherwise of any deeds of grant (or any renewal of any of the deeds of grant made on substantially the same terms provided that DCC has supplied the undertaker with a copy of the new document) arising from the works.</u></p> <p><u>(2) Subject to sub-paragraphs 9(3), (4) (5) and (6), the undertaker shall bear and pay the costs reasonably incurred by DCC in making good damage to DCC apparatus or restoring an interruption in the supply provided by DCC.</u></p> <p><u>(3) Nothing in sub-paragraph 9(1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DCC, its officers, servants, contractors or agents.</u></p> <p><u>(4) DCC shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker.</u></p> <p><u>(5) Nothing in this Part shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and DCC in respect of any DCC apparatus laid or erected in land belonging to the undertaker on the date on which</u></p>
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			<p><a href="#">the Order is made.</a></p> <p><a href="#">(6) DCC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 10 applies. If requested to do so by the undertaker, DCC shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by DCC.</a></p> <p><a href="#">Arbitration</a></p> <p><a href="#">10.—(1) Subject to sub-paragraph (2), differences or disputes arising between the undertaker and DCC under this Part must, unless otherwise agreed in writing, be determined by arbitration in accordance with article 40 (arbitration).</a></p> <p><a href="#">(2) Article 40 does not apply where DCC uses a warrant of entry in accordance with the Water Industry Act 1991.</a></p>
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