

## Glyn Rhonwy Pumped Storage Development Consent Order

### Draft Development Consent Order

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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 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examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.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, 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 comes into force on [\*\*\*].

#### Interpretation

2.—(1) In this Order—

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

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

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

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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.

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

(f) 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(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.II), by section 64(1) (2) and (3) of the

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

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

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

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

“access plan” means the plan having drawing number GR\_160406\_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;

“indicative engineering drawings and sections” means the engineering drawings and sections for the authorised development having drawing numbers 2.02, 2.05, 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, 2.06.5-1, 2.06.6-1, 2.06.7, 2.06.8, 2.06.9, 2.06.10 and 2.06.11; 2.06.12 and certified by the Secretary of State as the indicative engineering drawings and sections for the purposes of this order;

“the land plans” means the plans having drawing numbers 141004-EXPA-LAND-001-J, 141004-OVER-LAND-001-J, and 141004-OVER-LAND-002-J 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 Order

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Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

- (a) 1984 c.27.
- (b) 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.
- (c) 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).
- (d) 2008 c.29.

limits 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;

“Order land” means the land shown coloured pink 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 plans, within which the authorised development may be carried out;

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

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

“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) to this Order;

“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) whose registered office is at 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\_160809\_DCO\_2.04b\_v17, GR\_160809\_DCO\_2.04c\_v17 and GR\_160809\_DCO\_2.04d\_v17 and certified as the works plans by the Secretary of State for the purposes of this Order.

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

(3) All 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.

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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.

(b) 2003 c.21 section 151 was amended by the Electronic Communications and Wireless Telegraphy Regulations 2011/1210. There are other amendments to this Act which are not relevant to this order.

## PART 2

### Principal Powers

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

3.—(1) Subject to the provisions of this Order 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 8 (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. Subject to requirement 18, 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 not permitted if it is likely 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(1)(a) 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 sub-paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

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

## **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

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(a) 10.(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.



given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(a); 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, 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-

- (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, by the Tribunal as if the compensation were due under Part 1 of the 1961 Act.

(4) This article is subject to article 31 (apparatus and rights of statutory undertakers in stopped-up streets).

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(a) 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.

## **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 are 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 prohibition and restriction of use 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 use 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 restriction or prohibition on use of, 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 restrict or prohibit use of, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily prohibited or restricted) 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 prohibit or restrict use of, 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 prohibit or restrict use of 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 sub-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 prohibition or restriction of use of any street which is authorised under this Order.

(9) Any application for consent to which paragraph (7) applies must note the time period allowed by that paragraph (7) 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 sub-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 paragraph (2) applies must note the time period allowed by paragraph (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 this 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 (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 (code of construction practice), 9 (water management plan) and 17 (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<sup>(a)</sup> (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 is not to 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<sup>(b)</sup>.

(8) If a person who receives an application or consent under sub-paragraph (3) or approval under sub-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 paragraph (8) applies must note the time period allowed by paragraph (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.

### **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.

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<sup>(a)</sup> 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.

<sup>(b)</sup> S.I.2010/675

(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 are to be made under this article—

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

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, by the Tribunal as if the compensation were due under Part 1 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 sub-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 paragraph (6) applies must note the time period allowed by paragraph (6) on the letter accompanying the application.

(8) As soon as practicable following the exercise of any powers under paragraph (1), any vehicles, 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 (2) 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.

(2) This article is subject to—

- (a) paragraph (2) of article 21 (compulsory acquisition of rights);
- (b) article 22 (acquisition of subsoil only); and
- (c) article 37 (Crown Rights)

#### **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 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981(a)).

### **Compulsory acquisition of rights**

**21.**—(1) The undertaker may acquire compulsorily such rights over the Order land as are specified in the book of reference and which may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 6 (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) the undertaker cannot be required to acquire a greater interest in that land.

(3) Schedule 6 (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.

### **Acquisition of subsoil only**

**22.**—(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) Where the undertaker acquires any rights in the subsoil under paragraph (1) the undertaker will not be required to acquire an interest in any other part of the land.

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

**23.**—(1) The undertaker must not exercise the powers under articles 19 (compulsory acquisition of land), 21 (compulsory acquisition of rights) or 22 (acquisition of subsoil only) until —

- (a) subject to paragraph (3), security of £2,650 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 £2,650 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

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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.11). There are other amendments to the 1981 Act which are not relevant to this Order.

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**

**24.—**(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 is inserted “and published”.

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

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

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

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

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

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

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

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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(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.



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

**25.**—(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.

(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 is to 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**

**26.**—(1) This article applies to—

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

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

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

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

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

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

**27.** Development consent granted by this Order 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**

**28.**—(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 authorises 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**

**29.**—(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 single trees, 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 must pay compensation to any person for any loss or damage arising from such activity; and

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(a) S.I. 1997/1160

(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does 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 (4), 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.

### **Statutory undertakers**

**30.**—(1) Subject to the provisions of Schedule 7 (protective provisions) the undertaker may for the purposes of article 10 (street works) remove or reposition apparatus belonging to statutory undertakers which is laid beneath any of the streets specified in Schedule 2 (streets subject to street works).

(2) Subject to the provisions of Schedule 7 (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.

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

**31.**—(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.

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

**32.**—(1) Where any apparatus of a statutory undertaker, public utility undertaker or of a public communications provider is removed under article 30 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 30 (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 does not have effect in relation to apparatus to which article 31 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

### **Protection of interests**

**33.** Schedule 7 (protection of electricity, gas, water and sewerage undertakers and public communications providers) to this Order is to have effect.

### **Removal of human remains**

**34.**—(1) In this article “the specified land” means the land within 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.

(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 is to 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 are to 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) does not apply to a removal carried out in accordance with this article.

### **Service of Notices**

**35.**—(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 (5) 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) or (2) 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.

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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.

(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—

- (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**

**36.**—(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;
- (g) the outline excess water management strategy;
- (h) the outline water management plan;
- (i) the outline construction traffic management plan;
- (j) the outline dust control and air quality management plan;
- (k) the outline silt management plan;
- (l) the outline baseline air quality plan;
- (m) the outline materials management plan;
- (n) the outline ordnance management strategy;
- (o) the outline archaeological compensation and enhancement strategy;
- (p) the outline land discovery strategy;
- (q) the outline health and safety plan;
- (r) the outline biosecurity plan;
- (s) the outline operational noise management plan; and
- (t) 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

**37.**—(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; or
- (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

**38.** 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

Address  
Date

*Name*  
Head of National Infrastructure Consents  
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 – 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.

Work No 4G – stabilisation of quarry edge.

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.

The further development listed in column 1 of the table below within the Works listed in column 2;

<i>Column 1</i>	<i>Column 2</i>
Temporary construction site offices	Works 1D, 3A and 4B
Haul roads and hard standing on site for the parking of construction vehicles plant and machinery or for the vehicles of construction workers	Works 1A, 1B, 1C, 1D, 1G, 3A, 4B, 4C, 4D

Extraction of materials by tunnelling, boring, blasting or digging, including any minerals present, necessary to undertake the Works	Works 1A, 1B, 2, 3A, 3B, 4A, 4C, 4E and 4F
Use of any materials extracted by the undertaking of the Works to form dam structures and slate mounds	Works 1A, 1B, 1G, 2, 3A, 3B, 4A, 4C, 4E and 4F
Reuse of slate and organic materials arising from reprofiling or landscape works to create temporary haul roads, access tracks and compounds	Works 1A, 1B, 1G, 2, 3A, 3B, 4A, 4C, 4E and 4F
Construction of temporary laydown storage areas and compounds and their restoration	1B, 1D, 1G, 3A, 4B, 4D, 4E
Bunds, embankments, landscaping, fencing and boundary treatments	All Works
Connection to the electricity network for the purposes of supply to the authorised development	Works 3A, 3B, 4D
Connection to the telecommunications network for the purposes of supply to the authorised development	Works 3A, 3B, 4D
Water supply works, foul drainage provision, surface water management systems, channelling and culverting	All Works
Habitat creation	All Works
Formation of permanent and temporary highways, footpaths, and other means of public access including diversion and stopping up of existing routes;	Works 1C, 1E, 1F, 2, 4D, 4E, 4F
Site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths)	All Works
Works for the benefit or protection of land affected by the authorised development	All Works
Earthworks (including soil stripping and storage, site levelling) and coffer dam	Works 1A to 1G inclusive, 3, 4A to 4G inclusive
Connections between works including installation of pipework	Works 3A, 3B, 4A

and further development within the Order limits comprising such other ancillary works as may be necessary or expedient for the purposes of the authorised development. Any further development under this Part 1 including the works listed in the table must not give rise to any materially new or materially 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 (code of construction practice) 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 36 (certification plans etc.) 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 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, buildings and structures in line with the provisions of the landscape and reinstatement plan.

(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	395AOD			

(1) Works Package number	(2) Element of authorised development	(3) Maximum height (metres)	(4) Maximum width (metres)	(5) Maximum length (metres)	(6) Other parameters
1B	Q1 slate mounds	360 AOD			935,000m <sup>3</sup> (Maximum aggregate volume all new slate mounds) Maximum extents must be 10m away from the Nant Y Betws, 4m away from Public Rights of Way and 2m away from any other area not forming part of the Works.
1A	Q1 Scour tower	395AOD			
1A	Q1 Scour/ discharge infrastructure				900mm (Maximum pipe diameter)
1A	Q1 Perimeter fencing	2			
1D	Q1 Two construction compounds				72,000 m <sup>2</sup> (Maximum (aggregate) site area of all Q1 construction compounds)
1E	Temporary replacement car parking area				895 m <sup>2</sup> (Maximum site area)
1F	Permanent car parking area				1,050 m <sup>2</sup> (Maximum site area)
2	Penstock			1800	4.5m (Maximum internal finished diameter)
3B	Turbine Hall				100,000 m <sup>3</sup> (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	6	12	

(1) Works Package number	(2) Element of authorised development	(3) Maximum height (metres)	(4) Maximum width (metres)	(5) Maximum length (metres)	(6) Other parameters
3A	Power House Perimeter fencing	3			
3A	Temporary construction compound				22,000 m <sup>2</sup> (Maximum site area)
3B	Tailrace				4.5m (Maximum internal diameter)
3B	Temporary Construction Tunnel and shaft				4.5m (Maximum internal diameter)
4A	Q6 Dam	156 AOD			
4A	Q6 Scour tower	156 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 in consultation (where appropriate) with Natural Resources Wales—

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

- (c) for Works 1A and 4A, details of the quarry linings and slate facings;
  - (d) the location, layout, design, external appearance and dimensions of dams, slate mounds, roads, car parks, public rights of way and fences;
  - (e) for Work 3A, an explanation of how the design takes account of industry good practice and guidance on non-ionising radiation; and
  - (f) for Work 4E, details of how entrapment or snagging on the infrastructure in Llyn Padarn will be avoided, minimised and/or mitigated.
- (4) The details to be submitted for approval under 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 3B 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.

**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 construction works, must incorporate the following plans—

- (a) water management plan;
- (b) pollution prevention plan;
- (c) construction traffic management plan;
- (d) dust control and air quality 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 the relevant requirements.

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

(5) Subject to the provisions of requirement 21, 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) Baseline air quality 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) biosecurity plan;
- (h) operational noise management plan.

(2) Any plan or strategy required under this requirement must include the details set out by chapter 16 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 21, all construction works for the authorised development must be carried out in accordance with the approved plans and strategies.

### **Compliance with outline plans**

**8.** The outline plans certified under article 36 (certification of plans etc.) set out the matters that must be addressed and the minimum standards that must be complied with in the following plans:

- (a) water management plan;
- (b) pollution prevention plan;
- (c) construction traffic management plan;
- (d) dust control and air quality 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;
- (k) silt management plan;
- (l) air quality baseline monitoring plan;
- (m) materials management plan;
- (n) ordnance management strategy;
- (o) land discovery strategy;
- (p) health and safety plan;
- (q) operational noise management plan;
- (r) bio security plan;
- (s) archaeological compensation and enhancement strategy;
- (t) excess water management strategy; and
- (u) code of construction practice.

### **Water management plan**

**9.—(1)** In accordance with chapter 9 of the environmental statement and the outline CoCP and outline water management plans certified under article 36 (certification of plans etc.), the water management plan must include:

- (i) details of the temporary surface water drainage system to be implemented on site during construction of the authorised development.



- (ii) details of a water quality monitoring programme including the location and frequency of water body observations and water quality sampling, and the suite of analysis (to include in situ and samples collected for laboratory analysis as necessary),
  - (iii) details of an action plan describing the process for responding to abnormal or unusual results,
  - (iv) details of monitoring of water to be dewatered from the headpond and tailpond (Q1 and Q6), to include monitoring before dewatering commences and a scheme setting out the intermittent stage or stages at which dewatering of the tailpond (Q6) will be paused and additional sampling of water quality and fine sediment (where it is reasonable and practical to obtain a sample of fine sediment) carried out;
  - (v) any actions to be taken where dewatering monitoring results are outwith the anticipated acceptable range;
  - (vi) an overview of the measures to prevent water pollution to controlled waters and private water supplies; and
  - (vii) an overview of the pollution incident and emergency response procedure.
- (2) The temporary surface water drainage system must not discharge either directly or indirectly into the public sewerage system or to controlled water without the appropriate consents/permissions being in place and the necessary treatment being provided.
- (3) The water quality monitoring programme and action plan must cover private water supplies, Llyn Padarn, the Nant-y-Betws and the Afon Gwyrfai.
- (4) The sampling suite must consider the following parameters as a minimum: Total and dissolved metals, electrical conductivity, pH, suspended solids, chemical oxygen demand (COD), biochemical oxygen demand (BOD) and turbidity (measured in Nephelometric Turbidity Units (NTUs)).
- (5) Water quality monitoring must be undertaken by the undertaker at locations approved in advance in writing by the relevant planning authority in consultation with Natural Resources Wales for the following periods as a minimum:
- (i) for private water supplies; once a month for a minimum of 6 months prior to the start of any construction works of the authorised development where access to such supplies is granted;
  - (ii) 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
  - (iii) throughout the construction programme and for a minimum of 6 months post completion.
- (6) The plan must be consistent with the mitigation requirements set out by Statement chapter 9 of the environmental statement and any Environmental Permit conditions imposed by Natural Resources Wales.
- (7) The plan must be reviewed by the undertaker no less than every 6 months from the date of approval, on the granting of any variation of this consent, and on the granting of or any variation to the environmental permits required for the authorised development.
- (8) The undertaking of and outcome of any review under paragraph (7) must 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.
- (9) Where, having considered the notice of review under paragraph (8), the relevant planning authority considers that an amendment is required the relevant planning authority may notify the undertaker within 7 working days of receipt of the notice of review.
- (10) Where the undertaker considers that an amendment is required and/or the relevant planning authority serves a notice under paragraph (9), the undertaker must submit an amended plan for the written approval of the relevant planning authority (in consultation with Natural Resources Wales) within 4 weeks of the date of the completion of the review.

### **Operational Water Quality Monitoring**

**10.**—(1) The undertaker shall carry out the following water quality monitoring during the operational phase of the authorised development;

- (a) monitoring of the water quality of private water supplies for a period of six months from the date of commencement of operation where access to such supplies is granted; and
- (b) monitoring of the water quality of surface water (including LLyn Padarn, Nant-Y-Betws and the Afon Gwyrfai) for a period of twelve months from the date of commencement of operation.

(2) The water quality monitoring to be carried out under paragraph (1) shall be carried out at the locations and times approved in writing in advance by the relevant planning authority having consulted National Resources Wales.

(3) The water quality monitoring to be carried out under paragraph (1) must include a sampling suite including total and dissolved metals, electrical conductivity, pH, suspended solids, chemical oxygen demand (COD), biochemical oxygen demand (BOD) and turbidity as a minimum.

### **Drainage**

**11.**—(1) The surface water drainage system must not discharge either directly or indirectly into the public sewerage system.

(2) No commencement of development of any permanent building is to be undertaken until written details of permanent surface and foul water drainage systems including means of pollution control and drainage between the new spoil heaps and the Nant Y Betws have been submitted to and approved by the relevant planning authority

(3) The relevant planning authority must consult Natural Resources Wales and Dwr Cymru on the details of the proposed permanent drainage systems for the authorised development.

(4) The approved details must be implemented prior to the commencement of operation of the authorised development.

### **Travel plan**

**12.**—(1) Prior to the commencement of operation of the authorised development a travel plan setting out the arrangements for access by staff and measures to encourage sustainable transport must be submitted and approved by the relevant planning authority.

(2) The approved travel plan must be implemented during the operation of the authorised development.

### **Construction hours**

**13.**—(1) Other than as set out in paragraph (2) 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.

(2) Construction work can take place outwith the hours set out in paragraph (1) only;

- (a) for underground, excavation works;
- (b) for the disposal of ordnance where such disposal is urgently necessary in the interests of health and safety or the protection of life or property; or
- (c) with the prior written approval of the relevant planning authority.

(3) 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.

(4) In extending working hours under sub-paragraph (2)(b) the relevant planning authority must have regard to the impact on residents and users of any land affected.

(5) Approval to extend working hours under paragraphs (2) or (3) must not be given unless it has been demonstrated to the satisfaction of the relevant planning authority as being unlikely to give rise to any materially new or materially different significant effects from those assessed in the environmental statement.

### **Construction compounds and temporary structures**

**14.**—(1) No phase of the authorised development is to commence until for that phase details of the size, layout and location and external lighting of temporary construction compounds, 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 construction compounds, buildings and structures must be installed in accordance with the approved details.

(3) All temporary construction compounds, buildings and structures must be removed within 3 months of the cessation of use of the temporary construction compounds, buildings and structures concerned. 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 and in any event no later than 12 months from the cessation of use.

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

**15.** 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 within Work 1H.

### **External lighting**

**16.**—(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 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 21, the approved lighting scheme must be installed before the commencement of operation and be retained and complied with for the duration of the operation of the relevant phase of the authorised development.

### **Excess water management strategy**

**17.**—(1) Prior to the commencement of 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 in consultation with Natural Resources Wales.

(2) Subject to requirement 21 the authorised development must be carried out and operated in accordance with the approved excess water management strategy.

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

**18.**—(1) No phase of the authorised development is to 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 approved under paragraph (1) must be erected prior to the commissioning of the relevant phase of the authorised development.

(3) Subject to requirement 21 the approved details must be complied with for the duration of operation of the relevant phase of the authorised development.

### **Annual maintenance plans**

**19.**—(1) The undertaker will, on completion of construction and annually thereafter until the implementation of the decommissioning plan as approved under requirement 20, submit to the relevant planning authority a plan detailing the maintenance works which the undertaker intends to carry out in the next twelve months.

(2) The undertaker will notify the relevant planning authority of the completion of construction within five working days of its occurrence.

(3) The undertaker and relevant planning authority may agree a list of works which are considered to be routine maintenance or minor works which do not required to be included within the annual plan to be approved. Any works on the list agreed under this sub-paragraph will not be included within the plans submitted under paragraph (1) and will be deemed to be approved maintenance works until the relevant planning authority notifies the undertaker otherwise.

(4) The undertaker will include in the annual maintenance plan submitted any works agreed with or required by any engineer inspecting or supervising the authorised development under the Reservoirs Act(a).

(5) The relevant planning authority, having consulted any person they consider to be appropriate, will, within 28 days of receipt of the plan advise whether they consider any of the works proposed to exceed what is acceptable as maintenance of the authorised development. In making the determination of what will constitute maintenance the relevant planning authority will have regard to the activities assessed in the environmental statement for the authorised development. Works will not be acceptable as being maintenance works where they would have materially new or materially different effects to those assessed in the environmental statement. Where the relevant planning authority do not advise that any work is unacceptable within 28 days of receipt of the maintenance plan they will be deemed to have approved that plan.

(6) Where some of the works are not agreed to be maintenance the relevant planning authority may approve the plan in part by specifying the activities which are not approved. The undertaker must comply with such parts of the plan as are approved.

(7) The undertaker will notify the relevant planning authority of any material change to the maintenance plan throughout the 12 month period as required. The provisions of paragraphs (5) and (6) apply to such notification as if it were submission of the plan.

(8) Nothing in this requirement prevents the undertaker carrying out at any time any works in an emergency or which are required to ensure the structural stability of the dams or reservoirs or to protect life or property.

### **Decommissioning plan**

**20.**—(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.

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(a) 1975, c.23

- (2) the undertaker must notify the relevant planning authority in writing of—
- (a) the date of commencement of generation on the authorised development; and
  - (b) the date upon which use of the authorised development ceased
- within 5 working days of the occurrence of each event.
- (3) Use will be taken to have permanently ceased where:
- (a) 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
  - (b) 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.
- (6) The undertaker must implement the approved decommissioning plan.

### Submission and approval of details

- 21.**—(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 new or materially different significant effects to those assessed in the environment statement.

## SCHEDULE 2

Article 10

### Streets subject to street works

<i>(1)</i> Area	<i>(2)</i> Street subject to street works
County of Gwynedd	Ffordd Cefn Du. Public Highway from point A to point B as shown on the access plan
County of Gwynedd	Ffordd Clegir. 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, W, U 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	Ffordd 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 light green between parts I and J on the access plan
County of Gwynedd	Public Right of Way 9 Waunfawr	shown as a solid 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 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 brown dashed 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 temporarily prohibited or restricted

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street where traffic is to be</i>	<i>(3)</i> <i>Extent of temporary restriction</i>
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	<i>prohibited or restricted</i>	<i>or prohibition of traffic</i>
County of Gwynedd	Ffordd Cefn Du	Between points A and T, and U and B as shown coloured blue on the access plan
County of Gwynedd	Ffordd Clegir	Between points C and D as shown coloured orange on the access plan
County of Gwynedd	Glyn Rhonwy Industrial Estate Internal Road.	Between points E and F as shown coloured blue on the access plan
County of Gwynedd	Public Right of Way 9 Waunfawr	Between points M and U as shown coloured claret on the access plan

## SCHEDULE 5

Article 14

### Access to works

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

## SCHEDULE 6

Article 21(3)

### 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 is substituted the words “a right is purchased”; and

(a) 1973 c.26

(b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable”.

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

(a) for the word “part” in paragraphs (a) and (b) there is substituted the words “a right over land consisting”;

(b) for the word “severance” there is substituted the words “right affecting the whole of the house, building or manufactory or of the house and the park or garden”;

(c) for the words “part proposed” there is substituted the words “right proposed”; and (d) for the words “part is” there 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 is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired 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.

(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 is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

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

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

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(a) S.I.201[X]

## PART 1

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

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

2. In this Part:

“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—

- (a) any licence holder within the meaning of Part I of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part I of the Gas Act 1986(a);
- (c) a water utility undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage utility undertaker within the meaning of Part I of the Water Industry Act 1991, or

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(a) 1989 c.29.

(b) 1991 c.56.

(e) public communications provider;

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

**3.** This Part 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 Part 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 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 38 (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 38 (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 38 (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 must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under subparagraph (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 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

**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 38 (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) is reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not 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 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) is, 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, 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 the utility undertaker in question, 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 Part affects 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.

**11.** Nothing in this Part applies to Dwr Cymru Cyfyngedig (Welsh Water) to whom the provisions of Part 2 apply.

## PART 2

### Protection for Dwr Cymru Cyfyngedig (DCC)

1. For the protection of DCC referred to in this Part 2 of Schedule 7, the following provisions, unless otherwise agreed in writing between the undertaker and DCC, have effect.

2. In this Part of this Schedule:

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

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

“clearance area” means the area of land:

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

(b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is 300mm in diameter or more; or

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

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

“functions” has the same meaning as in section 219 WIA 1991 and includes powers and duties;

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

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

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

“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

for the avoidance of doubt, all other terms are as defined in Part 1 of this Schedule or article 2 (interpretation) of this Order.

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 is not to acquire any DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Schedule.

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

## **Precedence of the WIA 1991**

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

- (a) sections 41-44 of the WIA 1991 in respect of water main requisitions;
- (b) section 45 of the WIA 1991 in respect of any connections to a water main;
- (c) sections 98-101 of the WIA 1991 in respect of sewer requisitions;
- (d) section 102 of the WI
- (e) A 1991 in respect of the adoption of sewers and disposal works;
- (f) section 104 of the WIA 1991 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;
- (g) sections 106 to 109 of the WIA 1991 (inclusive) in respect of any connections to public sewers;
- (h) section 111 of the WIA 1991 in respect of the restrictions on use of public sewers;
- (i) sections 158 and 159 of the WIA 1991 in respect of statutory rights of access to DCC apparatus;
- (j) section 174 of the WIA 1991 in respect of offences of interference with works etc;
- (k) section 178 of the WIA 1991 in respect of obstruction of sewerage works etc; and
- (l) section 185 of the WIA 1991 in respect of the removal, diversion or alteration of DCC apparatus.

## **Protection of DCC apparatus**

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

(2) DCC is to 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) will 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:

- (a) the commencement date and completion date of the specified works;
- (b) the reasonable removal, extension or alteration of apparatus necessitated by the specified works;
- (c) works for the protection of apparatus necessitated as a result of the specified works;
- (d) provision for access to any apparatus; and
- (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.

(3) Once approved under sub-paragraph 5(2), the draft specification is to become the specification and the works are to 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 is entitled to watch and inspect the execution of those works.

(4) Nothing in this paragraph 5 precludes the undertaker from submitting at any time 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 apply to and in respect of the new draft specification.

(5) The undertaker is not 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 is to comply with sub-paragraphs 5(1) and (3) above in so far as is reasonably practicable in the circumstances.

(6) DCC may opt to carry out any temporary and/or protective works specified under sub-paragraph 5(2) to DCC apparatus, and if DCC opts to do so it will:

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

(7) Only those contractors that satisfy DCC's reasonable health & 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.

(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.

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

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

### **Suspension of works**

**6.—**(1) DCC is entitled to instruct the undertaker to suspend the works if in DCC's reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DCC apparatus 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:

- (a) the undertaker must procure that it and its contractor(s) and subcontractor(s) will forthwith suspend or cease the works having due regard to health and safety factors and will discuss and agree with DCC the remedial actions required prior to resuming the works;
- (b) the undertaker and DCC must act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
- (c) DCC must submit to the undertaker within 5 days following the suspension, a written notice specifying the reasons for suspending the works;



- (d) in the event that DCC fails to supply the written notice within 5 days of suspension DCC's instruction to suspend the works will be void and the undertaker will be entitled to recommence the works; and
- (e) DCC shall commence, carry out and complete any remedial works pursuant to sub-paragraph 6(2), as soon as reasonably practicable and DCC must give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker will be entitled to resume the works.

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

**Co-Operation**

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 must use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party’s works. In respect of the 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.

(2) Subject to paragraph 8, differences or disputes arising between the undertaker and DCC under this Schedule will, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 38 (arbitration) of this Order.

**Emergency Works**

8.—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works. For the avoidance of doubt, in the event that DCC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 9 applies.

(2) DCC must at all times be permitted to carry out any emergency works in relation to its DCC apparatus within the Order Limits in accordance with Part II Schedule 6 WIA 1991.

(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph 8(2) takes precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker must reschedule its works accordingly.

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

**Damage to DCC apparatus**

9.—(1) Subject to sub-paragraphs 9(3), (4) (5) and (6), the undertaker and holds 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:

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

(2) Subject to sub-paragraphs 9(3), (4) (5) and (6), the undertaker will bear and pay the costs reasonably incurred by DCC in making good damage to DCC apparatus or restoring an interruption in the supply provided by DCC.

(3) Nothing in sub-paragraph 9(1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DCC, its officers, servants, contractors or agents.

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

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

(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 9 applies. If requested to do so by the undertaker, DCC must provide an explanation of how the claim has been minimised. The undertaker will only be liable under this paragraph 9 for claims reasonably incurred by DCC.

### **Arbitration**

**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 38 (arbitration).

(2) Article 38 does not apply where DCC uses a warrant of entry in accordance with the WIA 1991.

## **SCHEDULE 8**

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 their 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 3 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement indicates that 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. Where the consultee requires further information they must notify the relevant planning authority in writing specifying the further information required

within 15 business 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 20 business days from receipt of the consultation notification from the relevant planning authority.

(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.

### **Provision of information by Consultees**

**3.**—(1) Unless sub-paragraph (2) of this paragraph applies any consultee who receives a consultation under sub-paragraph 2(3) must respond to that request within 28 days from receipt.

(2) Where any consultee requests further information in accordance with the timescales set out in sub-paragraph 2(3) then they must respond to the consultation within 28 days from the receipt of the further information requested.

### **Fees**

**4.**—(1) The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (a)(or any regulations replacing the same) apply to an application made to the relevant planning authority for agreement or approval under a requirement as if the application was an application made under a planning condition attached to a planning permission for the authorised development.

(2) The time periods for a refund are set from the determination date specified in article 22 of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012(b). Any fee paid under this Schedule must be refunded to the undertaker within—

- (a) 4 weeks of the application being rejected as invalidly made; or
- (b) 8 weeks after the determination date for applications where the relevant planning authority fails to determine the application within the period determined under paragraph 1;

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**

**5.**—(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) apply to any appeal under sub-paragraph (1) as if the requirement concerned was a condition imposed on a grant of planning permission.

### **Interpretation of Schedule 8**

**6.** In this Schedule—

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(a) SI 2015/1522  
(b) SI 2012/801

“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<sup>(a)</sup>;  
“requirement consultee” means anybody named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

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<sup>(a)</sup> 1971 c.80

## **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 36 (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.