



# The North Wales Wind Farms Connection Project

## Explanatory Memorandum

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## **Draft Explanatory Memorandum**

### **The North Wales Wind Farms Connection Order**

**Regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009**

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## 1. SUMMARY

- 1.1 This memorandum supports the application by SP Manweb PLC ("**SP Manweb**") under the Planning Act 2008 (the "**Act**") for the North Wales Wind Farms Connection Development Consent Order (the "**Order**"). The Order would grant powers to construct and install, operate and maintain an approximate 17 kilometre 132 kV electricity distribution connection from the North Wales wind farm substation (near Clocaenog and known as the "**Collector Substation**") to the terminal point located to the south of Groesffordd Marli to Glascoed Road, both in Denbighshire.
- 1.2 The whole project is known as the North Wales Wind Farms Connection Project. That part of the North Wales Wind Farms Connection Project that is the subject of the application for the Order, is known as the "**Proposed Development**". The Proposed Development will carry the power from four proposed wind farms at Clocaenog Forest, Brenig, Nant Bach, Derwydd Bach due to be constructed in North Wales by 2017 (the "**Wind Farms**"). The Proposed Development will provide the capacity necessary for the electricity distribution network in the area to transport increased power flows and meet predicted energy demand levels.
- 1.3 This memorandum explains the purpose and effect of each article of, and Schedules to, the draft Order, as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>1</sup>. The term "DCO" has been used in other application documentation. It has the same meaning as the "Order", which has been adopted in this document to be consistent with the draft Order. The draft Order is based on the General Model Provisions<sup>2</sup> (the "**model provisions**"), unless otherwise stated. Where there is a departure from the model provisions or an article is based on other precedent orders, an explanation of the new provision is provided. A comparite showing the differences between the model provisions and the draft Order is included at Appendix 1. In general, precedents used for the purposes of the Order follow development consent orders for electric lines, such as the National Grid (King's Lynn B Power Station Connection) Development Consent Order 2013 and the National Grid (North London Reinforcement Project) Development Consent Order 2014.
- 1.4 The draft Order does not include those model provisions which are not relevant or applicable and this explanatory memorandum does not provide a further explanation for their omission.
- 1.5 Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, SP Manweb considers it is still relevant to note

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<sup>1</sup> S.I. 2009/2264.

<sup>2</sup> The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265).

and explain differences where the draft Order contains variations to the model provisions.

## 2. PURPOSE OF THE ORDER

2.1 The Proposed Development lies wholly within Wales and includes the installation of a 132kV electric line above ground. It is, therefore, a nationally significant infrastructure project ("**NSIP**") for the purposes of sections 14(1)(b) and 16 of the Act. As the Proposed Development is an NSIP, development consent must be obtained to authorise it, and an application for a development consent order is being made to the Secretary of State under section 37 of the Act.

2.2 The Order would authorise the authorised development described in Schedule 1 of the Order. In summary, the authorised development (i.e. the Proposed Development) includes:

2.2.1 construction and installation of an approximate 17km 132kV overhead electricity distribution connection between the Collector Substation in Clocaenog Forest, Denbighshire, to the terminal point located to the south of Groesffordd Marli to Glascoed Road, Denbighshire. Whilst the start and finish of the 132kV overhead line are both in Denbighshire, along the 17km route the 132kV overhead line moves through the counties of Denbighshire and Conwy. For this reason, and to assist Denbighshire County Council and Conwy County Council, Schedule 1 to the draft Order identifies that part of the line within Denbighshire (numbered work 1A) and that part of the line within Conwy (numbered work 1B);

2.2.2 a temporary construction compound at Broadleys Farm, A453, Denbighshire (numbered work 4) and temporary storage or 'laydown areas' along the alignment (numbered works 2A and 2B); without which the 132kV overhead line could not be constructed;

2.2.3 access points for pedestrians and vehicles along the length of the 132kV overhead line (numbered works 2A and 2B). These accesses are either required just for the duration of the construction period or are required for construction and, once the 132kV overhead line is operational, maintenance. Where the accesses are required for maintenance purposes, the accesses are created for the relevant maintenance period and then the land restored (in other words, the access works are temporary in nature and can be carried out and the land restored at any time during the operational life of the 132kV overhead line). Without these accesses, the 132kV overhead line could not be constructed or maintained;

2.2.4 landscaping and ecological measures to restore trees, hedgerows, and other vegetation that have been removed

during construction and are therefore considered to be an integral part of the NSIP (numbered works 2A and 2B);

2.2.5 landscaping to mitigate any adverse effects of the maintenance and operation of the 132kV overhead line and is therefore considered to be an integral part of the NSIP (numbered works 3A and 3B); and

2.2.6 other integral works such as site preparation and clearance, earthworks, alteration of existing services and minor street works (numbered works 2A and 2B).

2.3 No associated development is applied for as the Proposed Development is located within Wales and pursuant to section 115 of the Act a development consent order cannot be made for associated development within Wales (except in specific circumstances which are not relevant in this instance).

2.4 Guidance on associated development has been issued by the Secretary of State<sup>3</sup>. This Guidance explains that the Secretary of State will decide on a case by case whether or not development should be treated as associated development.

2.5 SP Manweb has reviewed all of the works that comprise the North Wales Wind Farms Connection Project and has identified those elements that it considers would be classed as associated development if the application were being made in England. These elements, which are therefore not included in this application for development consent, include the following:

#### 2.5.1 Collector Substation

(a) SP Manweb considers that there are, in this case, alternative means of connecting and transmitting the generation at the individual Wind Farms. The proposed Collector Substation was promoted as it avoids extending the proposed 132kV overhead line or alternatively, the development of a larger customer developed substation. As the Collector Substation is subordinate to the NSIP (i.e. the Proposed Development), and not part of the NSIP (rather it supports the NSIP), the Collector Substation is associated development and therefore not part of the application for the Order. The inclusion of a temporary storage area within the Collector Substation during construction is subordinate to the NSIP and is also associated development.

#### 2.5.2 St Asaph Substation

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<sup>3</sup> *Planning Act 2008: Guidance on associated development applications for major infrastructure projects* (Department for Communities and Local Government) (April 2013).

- (a) The proposed works to St Asaph Substation, including the development of an underground cable taking the connection point at St Asaph to the terminal point of the NSIP (i.e. the Proposed Development), are works that are subordinate to, and support, the NSIP. However neither are considered 'integral' to, nor part of, the NSIP. The proposed works would avoid the need for an additional substation to be developed and connected, or for the NSIP to be extended beyond the current terminal point and for the development of an alternative terminal structure at a more visually prominent location. The inclusion of a temporary storage area within the St Asaph Substation during construction is subordinate to the NSIP and is also associated development.

### 2.5.3 Diversion of other overhead lines

- (a) Along the route of the NSIP (i.e. the Proposed Development), diversions of existing lower voltage overhead line crossings will be necessary. Appendix 3 of the Design and Construction Report (document reference 7.1 and 7.2), identifies the proposed diversions together with the current proposed solution that is considered likely and which has been used to assess the diversions for the purposes of the cumulative assessment in the Environmental Statement. These diversions are required in order to construct the NSIP and are therefore subordinate to, and support, the NSIP.

2.6 In the application documents, the above development is referred to as the "**Wider Scheme**".

## 3. **ANCILLARY POWERS**

3.1 The Order also contains several powers that are ancillary to the authorised development (i.e. provisions not consisting of development).

3.2 The main ancillary matter is a power to acquire rights compulsorily or by agreement, in accordance with section 120(4) and 122 of the Act. These rights, including the imposition of restrictions, are required for the Proposed Development. Whilst not forming part of the Proposed Development as explained above, rights are also being sought in respect of that part of the underground cable from the terminal point of the overhead line to the highway at Groesffordd Marli. Once at the highway, SP Manweb has statutory powers to break open the highway to install apparatus, including a cable. These rights are being sought under the Order as they are required to facilitate, or are incidental to, the Proposed Development (section 122(2)(b) of the Act). A justification for these rights and restrictions is set out in the Statement of Reasons that accompanies the application (document reference 4.1).

3.3 The Order seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. In such cases, sections 117 and 120(5) of the Act require that the Order be made by Statutory Instrument. The Order is therefore drafted in that form.

#### 4. **DRAFT ORDER**

4.1 The provisions of the Order are explained below.

#### 4.2 **Part 1 – Preliminary**

##### *Article 1 (citation and commencement)*

4.2.1 Article 1 sets out the name and commencement date of the Order.

##### *Article 2 (interpretation)*

4.2.2 Article 2(1) provides for the interpretation of the rest of the Order, including the Schedules. The definitions used in the model provisions are amended and supplemented to reflect the particular circumstances of the authorised development and changes to the Act which have been made since it was originally enacted. A number of definitions are added including:

- (a) "design and construction report" which has been included to define this term which is used throughout;
- (b) "electronic transmission", which has been included as the Order authorises the serving of notices under the Order by electronic transmission;
- (c) "environmental statement", which has been included to define this term which is used throughout;
- (d) "limits of deviation" to explain the limits of deviation in which the authorised development can be undertaken;
- (e) "the requirements" which means those requirements which are set out at Schedule 2;
- (f) "street authority", the definition has been amended to provide for the fact that temporary streets will be removed from the Order land once the construction of the authorised development has been undertaken. In these circumstances the Order provides that maintenance of the restored land will be the responsibility of the freehold landowner of that land, rather than the street authority, which would no longer exist in the absence of a street.



- 4.2.3 Other additions include "access and rights of way plans", "address", "apparatus", "date of final commissioning", "footpath", "footway", "highway" and "highway authority"
- 4.2.4 The definition of "maintain" is a model provision definition but has been qualified such that any works of maintenance cannot vary the authorised development as defined in Schedule 1. The environmental statement has assessed maintenance activities (as defined in the draft Order).
- 4.2.5 The definition of "relevant planning authority" is a model provision definition but has been amended to refer to the local planning authority for the areas to which the specific provision relates. This is necessary as the authorised development passes through Denbighshire and Conwy.
- 4.2.6 Article 2(2) expands the definition of rights over land, as included in the model provisions, to clarify references to the imposition of restrictions over the Order land.
- 4.2.7 Article 2(3) defines measurements as approximate, in line with the model provisions.
- 4.2.8 Articles 2(4) to (7) are not in the general model provisions. Article 2(4) provides that areas given in the Book of Reference (document reference 4.3) are approximate since the Book of Reference is outside the scope of Article 2(3). Articles 2(5) and 2(6) explain how references in the Order to numbered works, letters or numbered points are to be construed, and Article 2(7) clarifies that "includes" is without limitation.

### 4.3 **Part 2 - Principal powers**

#### *Article 3 (Development consent etc. granted by the Order)*

- 4.3.1 Article 3 gives the principal power to carry out the authorised development, as described in Schedule 1 to the Order, within the Order limits. The development consent is subject to the requirements listed in Schedule 2 to the Order, which are described further below. The article is a modification of the model provisions.
- 4.3.2 There are no "ancillary works" for the authorised development within the meaning given in Article 1 of the model provisions, and so this term has been removed from Article 3 and Article 2 of the Order.
- 4.3.3 Paragraph 2 confirms the limits of deviation within which the authorised development can be undertaken. This is explained further below.

#### *Article 4 (Maintenance of authorised development)*

4.3.4 This Article sets out the scope within which the undertaker may maintain the authorised development. Article 4(1) closely reflects the terms of the model provisions. Article 4(2) restricts maintenance to works carried out within the Order limits to provide defined parameters within which this power can be exercised. A definition of "maintain" has been included in Article 2 so it is clear what the term involves. Defining the term "maintain" is preceded and has been used in numerous orders and the proposed definition was used in the National Grid (North London Reinforcement Project) Order 2014.

*Article 5 (Limits of deviation)*

4.3.5 The Article reflects a provision which is included in the railway model provisions and which is appropriate in the context of linear projects. These limits permit a lateral deviation shown on the works plans and a vertical deviation referred to in paragraph (b). Precedence for this Article is also contained in the National Grid (North London Reinforcement Project) Order 2014.

4.3.6 Provisions relating to limits of deviation are common in linear projects and they provide the necessary flexibility to ensure that the authorised development can be implemented and that unforeseen issues do not prevent the development being realised.

4.3.7 The lateral limits of deviation are shown on the works plans and constrains the location of these works within the limits of deviation but the Article does allow construction and maintenance activities for these works to be carried out anywhere within the Order limits.

4.3.8 The vertical limits of deviation have been set to 2 metres upwards and any amount necessary or convenient downwards. This provision has been included to provide a degree of flexibility in the construction of the authorised development. An element of flexibility in downwards deviation is required so that any construction can reflect ground conditions when the works are carried out.

*Article 6 (Installation and operation of the authorised development)*

4.3.9 This Article confirms that the undertaker may not only install the electric line but also, in accordance with section 141 of the Act, has authority to keep installed the electric line above ground. This authority is provided in lieu of consent which would otherwise be required under section 37 of the Electricity Act 1989.

4.3.10 Paragraph 2 of the Article confirms that the undertaker may operate and use the electric line and any other elements of the

authorised development as part of the electricity distribution network in England and Wales. This paragraph is preceded in the made National Grid (King's Lynn B Power Station Connection) Order 2013. It has also been included in the draft order for the National Grid (Hinkley Point C Connection Project) Development Consent Order.

*Article 7 (Benefit of the Order)*

- 4.3.11 This Article provides that the undertaker has the sole benefit of the Order, subject to Article 8 (*Consent to transfer benefit of the Order*) This provision overrides section 156(1) of the Act (as permitted by section 156(2)) which, if applied, would confer the benefit of the Order on anyone with an interest in the land. Given the nature of the authorised development, it would be impracticable and inappropriate for a variety of landowners to implement parts of the Order, as might occur without this provision. The Article is consistent with the model provisions.

*Article 8 (Consent to transfer benefit of the Order)*

- 4.3.12 This Article provides for exceptions to Article 7 and allows any or all of the benefit of the provisions of the Order and related statutory rights to be transferred to another person, with the consent of the Secretary of State, subject to exceptions. The Article is based on the model provisions, with the exception of paragraph 4.
- 4.3.13 Under Article 7(4), the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order but such consent is not required where: (i) the transferee or lessee is a statutory undertaker; or (ii) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant. The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar financial and regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims.
- 4.3.14 Paragraph 2 has been amended so that it refers to 'transfer, or grant' which is considered to be more accurate than 'agreement'.

*Article 9 (Application and modification of Hedgerow Regulations 1997)*

- 4.3.15 Section 120(5)(a) of the Act provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be

made in the Order. This Article modifies the Hedgerow Regulations 1997 for the purposes of carrying out the authorised development. The modification, which is based on the model provisions, means that there will be no additional requirement to obtain the consent of the local authority to remove relevant hedgerows, where this is necessary for carrying out the authorised development.

#### 4.4 **Part 3 – Streets**

##### *Article 10 (Power to alter layout, etc., of streets)*

4.4.1 This Article allows the undertaker to alter the layout of a street for the purposes of the authorised development. Article 10 permits the undertaker and anyone else with the benefit of the Order to alter the layout of the streets in Schedule 3 to the Order to accommodate the authorised development. Where the street is not listed in Schedule 3, the undertaker would be required to obtain the consent of the relevant street authority (paragraphs (2) and (4)). A street authority that fails to respond to an application for consent within 56 days of the application being made is deemed to have given its consent. This provision is necessary to give full effect to the power to carry out the authorised development as is provided for under section 120(5) of the Act.

4.4.2 Schedule 3 refers to permanent and temporary alteration of the street layout and a provision is included to secure restoration works where the alteration is for a temporary period only. SP Manweb is aware that in some cases the relevant land owners will not want the access works to be restored as they will improve the existing access arrangements. Therefore, the Article allows the street authority to agree that the restoration works do not need to be undertaken (paragraph (3)).

4.4.3 Article 10 is not included in the general model provisions. The Article has precedent in other linear schemes authorised by the Planning Act 2008<sup>4</sup> and is necessary to enable the authorised development to be constructed.

##### *Article 11 (Street Works)*

4.4.4 Article 11 is a model provision intended to permit in certain streets (as specified in Schedule 4) the carrying out of street works for the purposes of the authorised development. It has been amended so that the purposes for which street works can be undertaken (paragraph (1)) are specific to the authorised development and reflect the street works powers available to the undertaker in Schedule 4 to the Electricity Act 1989.

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<sup>4</sup> Article 11, The National Grid (North London Reinforcement Project) Order 2014 (S.I. 2014/1052)

- 4.4.5 Paragraph (5) brings in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street works carried out pursuant to paragraph (1). This provides protection for the street authority for the street in question.

*Article 12 (Construction and maintenance of new or altered means of access)*

- 4.4.6 This Article provides that new or altered streets are to be constructed to a particular standard and maintained at the expense of the undertaker for a year. Any part of the new or altered streets which are proposed to be public highway (as set out on the Rights of Way, Streets and Access Plan submitted with the undertakers' application for the Order (Document Reference 2.4.1 – 2.4.13) will then be maintained by the highways authority. Those parts of the new or altered streets which are not intended to be public highway (such as private accesses which the undertaker is altering or creating and as also set out in the Rights of Way, Streets and Access Plan) will then be maintained by the street authority. Where the works are to be restored, paragraphs (5) and (6) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic.

- 4.4.7 The Article is not a model provision but has precedent in the made National Grid (North London Reinforcement Project) Order 2014.

*Article 13 (Temporary prohibition or restriction of use of streets and public rights of way)*

- 4.4.8 This Article is refined from the model provisions and provides for the temporary alteration, diversion and prohibition or restriction on use of streets or public rights of way for the purposes of carrying out the authorised development. As per the model provision, it applies generally, and also applies specifically to certain streets or public rights of way which are set out in Schedule 6 to the Order. Where the street or public right of way are referred to in Schedule 6 then the undertaker must consult with the street authority before exercising the power and where the general power is being exercised the undertaker must obtain the consent of the street authority. If an application for consent is made to the street authority and no response is received within a period of 56 days then consent is deemed to have been given. As explained previously, this provision is considered necessary so that there is no delay to implementation of the authorised development.

- 4.4.9 Paragraph (2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in Article 13, to use such a street as a temporary working site.
- 4.4.10 The Article has been expanded from the model provisions so that it refers to public rights of way and the provisions relating to stopping up of a street have been removed as there is no requirement to stop up any such street for the purposes of the authorised development.

*Article 14 (Traffic regulation)*

- 4.4.11 This Article allows, with the consent of the traffic authority, the undertaker to regulate traffic on the roads to the extent that is necessary for the purposes of or in connection with the construction of the authorised development. The Article is not in the general model provisions but there is precedence for it in the draft National Grid (Hinkley Point C Connection Project) Development Consent Order, which refers to its use in other made orders<sup>5</sup>. It is considered necessary to ensure that the authorised development can be constructed without unnecessary delay.
- 4.4.12 As explained earlier, a provision has been added to provide that consent from the traffic authority is deemed to have been given if the authority fails to notify SP Manweb of its decision within 56 days of receipt of the application.

*Article 15 (Access to works)*

- 4.4.13 This Article is a modification of the model provision which permits the undertaker to form new or improve existing means of access with the approval of the relevant planning authority in consultation with the relevant highway authority. The modification is considered necessary to ensure that the undertaker can form the means of accesses it requires to deliver the authorised development.

*Article 16 (Agreement with street authorities)*

- 4.4.14 This Article is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street (including improvements provided in Article 12) and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets, which is common in many similar orders.

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<sup>5</sup> Article 37 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 and Article 38 of the Network Rail (Norton Bridge Area Improvements Order) 2014.

## 4.5 **Part 4 – Supplemental Powers**

### *Article 17 (Discharge of water)*

4.5.1 This Article is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference in the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2010. The model provision has also been modified to provide for deemed consent where an application for consent to discharge into any water course, public sewer or drain is not responded to within a period of 56 days.

### *Article 18 (Authority to survey and investigate the land)*

4.5.2 This is a model provision with minor amendments which allows the undertaker to survey and/or investigate land including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given, and is subject to the payment of compensation.

4.5.3 The minor drafting changes include:

- (a) in paragraph 1(b) "on the land" has been added;
- (b) in paragraph 3(a), "before or after" has been added to show that the proof of authority does not have to precede entry onto the land;
- (c) in paragraph 3(b) "with them" is changed to "onto the land";
- (d) in paragraph 4(a) the word "relevant" has been inserted in front of "highway authority" for clarity; and
- (e) as explained earlier, a provision has been added to provide for deemed consent where an application to survey or investigate land is not responded to within a period of 56 days.

## 4.6 **Part 5 – Powers of Acquisition**

### *Article 19 (Compulsory acquisition of rights)*

- 4.6.1 This Article gives the undertaker power to create and acquire new rights and impose restrictions for the purposes of the authorised development. Paragraph (1) provides that SP Manweb may create and acquire new rights and impose the restrictions described in the Book of Reference (document reference 4.3) with the extent of this power being exercised over the land shown on the land plans (document reference 2.2.1 – 2.2.13). Paragraph (2) provides that where the undertaker needs only to acquire rights over the land or impose a restriction, it shall not be obliged to acquire any greater interest in that land.
- 4.6.2 As mentioned, the Article provides for the creation and acquisition of rights, as well as the imposition of restrictions. This is considered necessary to ensure that it is not possible for anything to be done which would interfere with the authorised development. This approach has been adopted in orders made under the Transport and Works Act 1992 and is considered reasonable and appropriate in the context of the authorised development to restrict the use of land or airspace above or beneath the overhead electric line or underground cable.
- 4.6.3 Paragraph (3) and Schedule 7 impose modifications to the compulsory purchase and compensation provisions under the compulsory purchase code. They do not affect the entitlement to compensation but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order; the creation of new rights and the imposition of restrictions. Accordingly, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights and imposition of restrictions and not to affect the amount of compensation to which landowners would be entitled. This approach is precedented and has been used in other orders.
- 4.6.4 Paragraphs (4) and (5) allow the undertaker to transfer its power to create and acquire rights and to impose restrictions to a statutory undertaker where required for purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, subject to obtaining the consent of the Secretary of State. This part of the Article is intended to reduce delay by requiring statutory undertakers to exercise their own powers.
- 4.6.5 Paragraphs (2) and (4) of the general model provisions has been deleted as the extinguishment of private rights is provided for pursuant to Article 22 (Private Rights).

*Article 20 (Statutory authority to override easements and other rights)*



- 4.6.6 Article 20 provides that, in carrying out or using the authorised development and doing anything else authorised by the Order, the undertaker may, by virtue of section 158 of the Act, interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that by virtue of section 152 of the Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.
- 4.6.7 This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in the Rookery South (Resource Recover Facility) Order 2011 (Article 18) and the Hinkley Point C (Nuclear Generating Station) Order 2013 (Article 25).

*Article 21 (Time limit for exercise of authority to acquire land compulsorily)*

- 4.6.8 This article imposes a time limit of 5 years from the date of the Order being made for the exercise of powers of compulsory acquisition. It is a model provision.

*Article 22 (Private rights)*

- 4.6.9 This Article is based on a model provision and has the effect of extinguishing or suspending private rights and restrictive covenants over land:
- (a) in which the undertaker creates and acquires a right or imposes a restriction, whether compulsorily or by agreement; or
  - (b) which is owned by the undertaker
- 4.6.10 In either case, the suspension or extinguishment takes effect to the extent that the continuance of the rights would be inconsistent with an activity authorised by the Order. The suspension of the right/restriction would subsist only for the period in which there is an inconsistency between the private right/restriction being imposed and the existing right or restriction relating to the land. In relation to rights/restrictions affected by land used for construction purposes they will be suspended for the construction period only, whereas rights which are affected by the operation of the 132 kV overhead line will be suspended for the lifetime of the 132 kV overhead line. The drafting departs from the model provision in that it relates to all rights/restrictions over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the

implementation or use of the authorised development. The Article follows the approach in the Rookery South (Resource Recovery Facility) Order 2011 (Article 17) and the M1 Junction 10a (Grade Separation) Order 2013 (Article 21).

- 4.6.11 Paragraph (2) provides that where any existing private rights or restrictive covenants would interfere with any activities authorised by the Order on land owned by the undertaker, then the suspension will take effect from commencement of any activity authorised by the Order.
- 4.6.12 Paragraph (3) provides that where any existing private rights or restrictive covenants would interfere with any activities authorised by the Order on land which the undertaker has taken temporary possession, then the suspension will take effect from when the undertaker takes lawful possession and will remain in place for as long as the undertaker remains in possession and the rights and/or restrictions are inconsistent with the exercise of the temporary possession of that land.
- 4.6.13 Paragraph (4) provides that there is an entitlement for compensation where loss is suffered as a result of the extinguishment or suspension of any private right or restrictive covenant.

*Article 23 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)*

- 4.6.14 This Article is a model provision that applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure.

*Article 24 (Acquisition of subsoil or airspace only)*

- 4.6.15 This Article allows the undertaker to acquire rights below the ground or above it. The Article is similar to the model provision except that it has been extended to include airspace as well as subsoil and to relate to rights and restrictions. This is so that the rights required for the authorised development can be acquired with as little impact as possible on the remaining interest of the affected landowners. The acquisition of interests in or rights over airspace is particularly relevant in the context of overhead electric lines and is precedented - Article 28 of the National Grid (North London Reinforcement Project) Order 2014.

*Article 25 (Rights under or over streets)*

4.6.16 This is a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions).

*Article 26 (Temporary use of land for carrying out the authorised development)*

4.6.17 This Article allows the land specified in Schedule 8 to be temporarily used for the purposes specified where required for the carrying out of the authorised development. The Article is in part a general model provision.

4.6.18 A modification to the model provision has been made to allow SP Manweb also to take temporary possession of any land within the Order limits but in respect of which no notice of entry has been served or a general vesting direction has been made.

4.6.19 The Article therefore means that SP Manweb can occupy the Order land to carry out certain activities (see paragraph (1)(b)-(d)) without having to acquire a right in that land. This provides flexibility to the undertaker and also enables the undertaker to minimise the land in which rights are to be compulsory created and acquired or restrictions imposed, thereby enabling the undertaker to match the area of land required for the rights and restrictions with the final footprint of the authorised development.

4.6.20 The amendment to the general model provision is therefore considered proportionate.

4.6.21 There are clear limits on the length of time that the undertaker can use land in this way. The undertaker must vacate the land within one year of the date of final commissioning of the authorised development (defined in Article 2), unless a notice to treat has been served or general vesting declaration made. There are provisions around giving 14 days' notice and restoration of the land following the temporary possession/works. There are exceptions to the requirement to restore the land which are not included in the model provisions. This would apply, for example, where mitigation is provided but SP Manweb does not need to retain a permanent interest in the land or to replace an electric line which SP Manweb has removed in order to construct and install the Proposed Development.

4.6.22 This is a modified model provision and provides for the payment of compensation for that temporary use of the land.

*Article 27 (Temporary use of land for maintaining the authorised development)*

4.6.23 This Article is similar to the Article 26 and provides for the temporary use of land (provided it does not form part of a house or garden or an occupied building) for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions around giving 28 days' notice and restoration of the land following the temporary possession. This is a modified model provision (paragraph 1(c) extends the model provision to include a right to enter on to the land for the purpose of gaining access to maintain the authorised development) and provides for the payment of compensation for that temporary use of the land.

*Article 28 (Statutory undertakers)*

4.6.24 This Article provides a power for the undertaker to extinguish or suspend the rights of, and remove or reposition the apparatus of, statutory undertakers shown on the land plans and described in the Book of Reference. It also provides a power to acquire new rights or impose restrictions over land belonging to statutory undertakers shown on the land plans and described in the Book of Reference. The model provision has been amended so as to allow for the suspension of rights of a statutory undertaker (for example where land is being used temporarily under the order) rather than just extinguishment and the ability to impose restrictions over land belonging to a statutory undertaker. Further, the ability to acquire land compulsorily has been removed as this is not proposed in the context of the authorised development. In all cases the powers conferred by this article are subject to the protective provisions within schedule 9 of the Order.

*Article 29 (Recovery of costs of new connections)*

4.6.25 This Article provides that persons who have to create a new connection following the exercise of powers under Article 28 may recover the costs of new connections from the undertaker. It is a model provision, with the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.

**4.7 Part 6 – Operations**

*Article 30 (Felling or lopping of trees and removal of hedgerows)*

4.7.1 This Article provides that the undertaker may fell or lop or cut back the roots of any tree or shrub to prevent it obstructing or interfering with the construction, maintenance or operation of

the authorised development. Compensation is provided for if loss or damage is caused. It is a modification of the model provision. Paragraph 4 of the article provides that the undertaker may, for the purposes of the authorised development, remove any hedgerow, or important hedgerow specified in Schedule 11, which falls within the Order limits.

4.7.2 Paragraph 1 modifies the model provision so it is clear that the power extends to trees or shrubs that are within or encroach upon the Order limits. The model provision has also been modified by the deletion of "passengers" which is not relevant to the authorised development.

#### 4.8 **Part 7 – Miscellaneous and General**

##### *Article 31 (Application of landlord and tenant law)*

4.8.1 This Article is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development.

##### *Article 32 (Disapplication of legislative provisions)*

4.8.2 This article disapplies the following legislation provisions in relation to the construction of works for purposes of construction or maintenance of the authorised development:

- (a) section 109 of the Water Resources Act 1991;
- (b) provision of any bye laws made pursuant to, or having effect as if made under paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991;
- (c) section 23 of the Land Drainage Act 1991;
- (d) the provision of any bye laws made under section 66 of the Land Drainage Act 1991

4.8.3 The authorised development includes crossings of various water courses which would require consent under the above statutory provisions. Section 150 of the Planning Act 2008 allows a development consent order to include provisions, the effect of which is remove a requirement for a prescribed consent or authorisation to be granted, if the relevant body has consented to the inclusion of the provision. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010, provides that the above statutory provisions can be disapplied under section 150.

4.8.4 The relevant body for the purposes of the above consents for the purposes of the authorised development is Natural Resources Wales ("NRW"). SP Manweb is in discussions with NRW to obtain its consent to the inclusion of this Article within the Order. SP Manweb's intention is to continue discussions and obtain the consent of NRW during the course of the examination. Any consent given by NRW will be recorded in a Statement of Common Ground.

4.8.5 The article is not part of the model provisions, but the reasons for its inclusion are explained above.

*Article 33 (Defence to proceedings in respect of statutory nuisance)*

4.8.6 Section 158 of the Act confers statutory authority for the purposes of a defence in statutory nuisance generally. This Article amends the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by section 158). The defence is available if the noise relates to the construction or maintenance of the authorised development and is in accordance with controls imposed by the local authority under the Control of Pollution Act 1974 or cannot reasonably be avoided.

4.8.7 The Article is based upon the model provision, but paragraph (1)(b)(i) has been removed as it relates to premises, which is not relevant for the purposes of constructing and operating a 132 kV overhead line.

*Article 34 (Protective Provisions)*

4.8.8 This Article provides for Schedule 9, which protects the interest of certain statutory undertakers, to have effect.

*Article 35 (Certification of plans etc.)*

4.8.9 This Article is a model provision which provides for the submission of the book of reference, the land plans, work plans, access and rights of way plans, the environmental statement and the design and construction report referred to in the Order to the Secretary of State in order that they may be certified as being true copies.

*Article 36 (Application and modification of legislative provisions)*

4.8.10 Section 120(5)(a) of the Act provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order. Article 36 provides that the legislative provisions relating to compensation for compulsory purchase apply, with certain modifications. The modifications which apply in these circumstances are set out in Schedule 7.

4.8.11 The article is not included within the model provisions.

*Article 37 (Service of notices)*

4.8.12 This Article deals with the service of notices pursuant to the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006.

*Article 38 (Procedure in relation to certain approvals etc.)*

4.8.13 This Article contains additional provisions in respect of any approval, consent or agreement which is required to be given under the Order. It provides that any such approval, consent or agreement by the relevant authority must be given in writing.

4.8.14 It also provides that the procedures set out in Schedule 10 apply to any consent, agreement or refusal which needs to be obtained under the requirements set out in Schedule 2 and any other consents required under the Order. The Article clarifies the procedure which applies in respect of these additional consents.

*Article 39 (Arbitration)*

4.8.15 This Article is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is a model provision.

## 4.9 Schedules

Schedule 1 (*Authorised development*) describes the authorised development.

4.9.1 The authorised development comprises works 1A, 2A, 3A, 4 within the County of Denbighshire and 1B, 2B and 3B within the County Borough of Conwy.

4.9.2 Work 1A comprises that part of the 132kV overhead line within Denbighshire and is the NSIP for the purposes of sections 14 and 16 of the Act. Work 1B is that part of the 132kV overhead line within Conwy and is the NSIP for the purposes of sections 14 and 16 of the Act. Whilst identified in two numbered works (so as to make it clear to the relevant planning authorities which part of the overhead line is in their respective jurisdictions), the 132kV overhead line is one single overhead line.

4.9.3 The 132kV overhead line commences at the Collector Substation located within Clocaenog Forest and the alignment passes in a northerly direction for approximately 17 kilometres to a terminal point, which is located to the south of Groesffordd

Marli to Glascoed Road. The route alignment is located in a rural area and passes into and out of the County of Denbighshire and County Borough of Conwy. The 132kV overhead line is required to connect the Wind Farms into the electricity distribution network at the existing St Asaph Substation. This will require works to St Asaph Substation and as part of these works there will also be an underground cable from the St Asaph Substation to the terminal point. The works to St Asaph Substation, including the underground cable, form part of the Wider Scheme and are not part of the application for development consent (as explained above).

4.9.4 Works 2A and 2B are those works which are integral to the construction and operation of the 132 kV overhead line. They include the following:

- (a) site preparation works and site clearance. These elements are required to enable the construction of the 132kV overhead line;
- (b) earth works which are required to enable the construction of the 132kV overhead line;
- (c) works to alter the position of existing services. Without this work the 132kV overhead line could not be constructed.
- (d) establishment of temporary laydown and storage area, temporary vehicle parking and construction fencing. All these elements are integral to the construction of the 132kV overhead line;
- (e) establishment of winching points and the installation of scaffolding. These elements are also integral to the construction of the 132kV overhead line, without which the 132 kV overhead line could not be constructed;
- (f) tree and hedgerow planting which are part of the overall design for the 132kV overhead line and which are therefore integral works to the 132kV overhead line;
- (g) landscaping and ecological measures to restore trees hedgerows and other vegetation that have been removed during construction. These works are required as a result of the construction of the 132kV overhead line;
- (h) drainage works. Drainage works are integral to the 132kV overhead line to enable construction.



- (i) works to streets and any alteration, removal or installation of road furniture required to facilitate the construction of temporary accesses.
- 4.9.5 Works 3A and 3B are the landscaping required to mitigate the adverse effect of the maintenance and operation of the 132kV overhead line and are integral to the authorised development.
- 4.9.6 Work 4 is for a temporary site construction compound, which is necessary to enable construction of the 132kV overhead line, without which the overhead line could not be constructed.
- 4.9.7 Schedule 2 (*Requirements*) sets out the requirements which apply to the carrying out of and operation of the authorised development under the Order.
- 4.9.8 Requirement 1 (Interpretation) provides for the interpretation of words and phrases used in this Schedule.
- 4.9.9 Requirement 2 (Time limits) is taken from the model provisions.
- 4.9.10 Requirement 3 (Detail Design). This requirement secures the carrying out of the authorised development in accordance with the approved plans, inclusive of limits of deviation, and other plans, drawings, documents, details, schemes, statements or strategies approved by the relevant planning authority pursuant to any requirement. Further the authorised development must be carried out in accordance with the parameters set out and substantially in accordance with the relevant design principles.
- 4.9.11 Requirement 4 (Stages of authorised development). The requirement provides that no development may commence until a written scheme setting out the stages of the development has been approved by the relevant planning authority. It is consistent with the model provisions, subject to amendments removing reference to the Commission.
- 4.9.12 Requirement 5 (Landscaping). The requirement provides for the submission of a written landscaping scheme which must be approved by the relevant planning authority, such scheme to be in accordance with the outline landscape management plan and accord with the planting principle contained in the ecological management plan. The requirement is consistent with the model provisions.
- 4.9.13 Requirement 6 (Implementation and maintenance of landscaping). The requirement should be read together with requirement 5 and requires implementation and maintenance of the approved landscaping scheme. It is based upon the model provisions.

- 4.9.14 Requirement 7 (Replacement planting). The authorised development necessitates the removal of trees and this requirement secures the replacement of these trees in accordance with an ecological management plan. The requirement is not based on the model provisions.
- 4.9.15 Requirement 8 (Felling). The authorised development includes the felling of trees and this requirement ensures that this is undertaken in accordance with the relevant guidance.
- 4.9.16 Requirement 9 (Highway works) provides that no work to construct or alter any permanent or temporary means of access to a highway shall commence until written details have been submitted and approved by the relevant highway authority.
- 4.9.17 Requirement 10 (Construction hours) controls construction hours during which construction work may be carried out. The requirement departs from the model provisions by providing different construction hours during summer and winter months and specifies works that can be undertaken outside of the core working hours.
- 4.9.18 Requirement 11 (Contaminated land and ground water). The requirement provides that should contamination be identified during the course of construction that an investigation and risk assessment must be undertaken and that risk assessment may identify the need for a detailed remediation strategy. If a detailed remediation strategy is required this will be prepared and submitted to the relevant planning authority and the authorised development will be carried out in accordance with that report. The requirement departs from the model provisions as the Environmental Statement does not identify that there are any significant risks of contaminated land or groundwater.
- 4.9.19 Requirement 12 (Archaeology) provides for the approval of a written scheme setting out the methodology for a watching brief over areas of archaeological interest. The requirement is based upon on the model provisions but is modified to reflect the findings of the Environmental Statement.
- 4.9.20 Requirement 13 (CEMP) requires the approval, by the relevant planning authority, of a construction environmental management plan which is in accordance with the outline construction environmental management plan. The authorised development must be carried out in accordance with the approved plan.
- 4.9.21 Requirement 14 (Piling) requires that no piling is undertaken until a piling method statement has been submitted to and approved by the relevant planning authority. The authorised

development is to be carried out in accordance with the approved details.

- 4.9.22 Requirement 15 (Restoration of land used temporarily for construction). The requirement requires the reinstatement of any land within the Order limits which has been used temporarily for construction. The requirement is a model provision.
- 4.9.23 Requirement 16 (Amendments to approved details) provides that any approved plan (with the exception of the land plans, works plans and access and rights of way plans) specified in requirement 3(1), the parameters specified in requirement 3(2) and any other plans, details, schemes or matters which are subject to approval may be amended subject to the approval by the relevant planning authority and provided the amendment is unlikely to give rise to any different environmental effects in comparison with the authorised development. This is an amendment to the model provision.
- 4.9.24 Requirement 17 (Requirement for written approval) is a model provision.
- 4.10 Schedule 3 (Streets subject to permanent and temporary alteration of layout) sets out the streets to be permanently altered (Part 1) or temporarily altered (Part 2).
- 4.11 Schedule 4 (Streets subject to street works) sets out the streets that would be subject to street works.
- 4.12 Schedule 5 (Access) sets out those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 4 respectively) and those parts of works to restore temporary accesses that are to be maintained at the public expense (Part 2) and at the expense of the street authority (Part 3).
- 4.13 Schedule 6 (Temporary prohibition or restriction of the use of streets or public rights of way) sets out the streets and public rights of way that will be subject to a temporary prohibition or restriction.
- 4.14 Schedule 7 (Modification of compensation and compulsory purchase enactments for creation of new rights) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965.

- 4.15 Schedule 8 (Land of which temporary possession may be taken) sets out the land temporary possession of which may be taken pursuant to Article 26.
- 4.16 Schedule 9 (Protective provisions) provides protective provisions for electronic communications code network operators and Dwr Cymru Cyfyngedig.
- 4.17 Schedule 10 (Procedure for discharge of requirements) provides a clear procedure for the discharge of requirements by the relevant authorities. It sets out clear time limits for decisions to be made within and makes provision for appeals to be made in the event of a refusal or if the relevant authority requires further information to be provided in relation to that application. Relevant authority includes relevant planning authority, relevant highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain.
- 4.18 Schedule 11 (Removal of hedgerows) set out those hedgerows, which are defined as important hedgerows under the Hedgerow Regulations 1997, which can be removed for the purposes of the authorised development.

## APPENDIX 1