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**Appendix 1: Welsh Government Advice Note**

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# Draft Explanatory Memorandum – The Western Power Distribution (Brechfa Forest Connection) Development Consent Order

## 1. Introduction

- 1.1 This memorandum explains the purpose and effect of each article of, and Schedules to, the draft Western Power Distribution (Brechfa Forest Connection) Development Consent Order<sup>1</sup> (“the Order”), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>2</sup> (“APFP”).
- 1.2 The Order is based on the provisions in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009<sup>3</sup> (the Model Provisions Order 2009) (the “Model Provisions”). The Model Provisions are followed as a baseline but with significant consideration of The National Grid (King’s Lynn B Power Station Connection) Order 2013<sup>4</sup>, the National Grid (North London Reinforcement Project) Order 2014<sup>5</sup>, the National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015<sup>6</sup> and The North Wales Wind Farms Draft Connection Order 2015<sup>7</sup>.
- 1.3 The Localism Act 2011 removed the requirement for the decision maker to have regard to the Model Provisions in deciding applications<sup>8</sup>. The Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 also removed the requirement on an applicant to explain in the explanatory

<sup>1</sup> S.I.201 [ ]/[ ].

<sup>2</sup> S.I.2009/2264

<sup>3</sup> S.I.2009/2265

<sup>4</sup> S.I.2013/3200

<sup>5</sup> S.I.2014/1052

<sup>6</sup> The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015

<sup>7</sup> The North Wales Wind Farms Draft Connection Order 2015

<sup>8</sup> Sections 128(2) and 237, Schedule 13 Part 1 Paragraphs 1 and 6, Schedule 25 Part 20 Localism Act 2011 c.20

memorandum divergences from the Model Provisions<sup>9</sup> though it is noted that the Planning Inspectorate's website states:

*'.....it may though still be useful and helpful for applicants to show how and why they have departed from the Model Provisions Order in their applications'*

- 1.4 The Planning Inspectorate has also issued Advice Note 15<sup>10</sup> in October 2014 which provides guidance on drafting Development Consent Orders ("Advice Note 15"). Advice Note 15 has no statutory status but has been used as guidance in the drafting of the Order.
- 1.5 Where there is a significant departure from the Model Provisions or an article is based on other precedent orders, an explanation of the new provision is provided. In general, the precedents followed for the Order are other development consent orders for electric lines, the National Grid (King's Lynn B Power Station Connection) Development Consent Order 2013, the National Grid (North London Reinforcement Project) Development Consent Order 2014, The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015 and The Draft North Wales Wind Farms Connection Order 2015 and where relevant, reference has been made to other development consent orders and the Transport and Works Act Orders for other linear schemes, such as railways and tramways.
- 1.6 The Order does not include Model Provisions which are not relevant or applicable to the proposed development and this explanatory memorandum does not seek to explain further their omission.
- 1.7 Where relevant, references to terms in this document are to the terms defined by the Order unless a contrary definition has been given.
- 1.8 The Order contains powers to acquire rights compulsorily. It seeks powers including the creation of and acquisition of rights, necessary to construct, use and maintain the authorised development. The Order is drafted as a Statutory Instrument for this purpose.

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<sup>9</sup> Regulation 3 (4) Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I 2012/635)

<sup>10</sup> The Planning Inspectorate, Advice Note 15, Drafting Development Consent Orders (October 2014)

## 2. Purpose of the order

- 2.1 The proposed development lies wholly within the County Borough of Carmarthenshire, Wales and includes the installation of a 132kV electric line above and below ground (“the proposed development”). It is a nationally significant infrastructure project (“NSIP”) for the purposes of sections 14(1) (b) and 16 of the Planning Act 2008<sup>11</sup> (“the Act”).
- 2.2 Western Power Distribution (South Wales) Plc. (“WPD”) is applying to the Secretary of State for the Order which would authorise works to construct the electric line to connect the Brechfa Forest West Wind Farm to the WPD substation at Swansea North (“the Application”). National Grid is the current registered proprietor of the substation and WPD holds a long lease over part of it.
- 2.3 The proposed development consists in summary of the following principal components: construction of a 28.6 kilometre (“km”) 132,000 volt (“132kV”) distribution connection between the connection point near Llandyfaelog and the Brechfa Forest West Wind Farm comprising:
- the installation of two sections of 132kV overhead line; and
  - the installation of 132kV underground cables including terminal connections to overground sections.
- 2.4 A detailed description of the proposed development is provided in the “Project description” in Chapter 2 of the Environmental Statement (Volume 6.2) (“the Environmental Statement”) which accompanies the Application. Chapter 6 of the Environmental Statement provides that the project as described has been assessed and notes at paragraph 6.4.4:

*‘The EIA has been undertaken during the initial design phase of the project and therefore some of the technical aspects of the construction and operation have yet*

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<sup>11</sup> 2008 c.29

*to be determined. Where an alternative option could incur additional impacts, these are discussed within the relevant sections. Also, the EIA has taken a precautionary approach to adopt conservatism in the assumptions made and any scenarios assumed, so that in general a reasonable ‘worst-case’ scenario was assessed. In that way, inherent uncertainties are accounted for and subsequent modifications to the project during the later design phases are less likely to fall outside of the assumed envelope of the assessment parameters.’*

2.5 Schedule 1 to the Order contains a description of three numbered works comprising the proposed development (Work No. 1, Work No.2 and Work No.3). The works packages split the proposed development into two overhead and one underground section. The proposed development includes works of a description in section 14 (1) (b) of the Act, the installation of an electric line above ground, other works that are included as ancillary to the development as described in sections 120 (3) and (4) and Part 1, Schedule 5 of the Act and works involved in placing electric cables underground which are integral to the proposed development (which are considered further below). None of these works are “associated development” which the Act precludes a development consent order from authorising in Wales for this type of project. The works described reflect the generic wording in Schedule 5 but are limited to those works described in Chapter 2 of the Environmental Statement and as described as assessed above. Works within this scope are considered within the envelope assessed.

2.6 The three numbered works are as follows:

2.6.1 Work No 1 – The installation and keeping of 132kV electric lines above ground of approximately 11.2 kilometres in length. These will comprise a three phase 132kV line (three wires/conductors and fibre optic cable) mounted on twin and single wooden poles, with supporting stay wires and terminal ends. The 132kV line commences at the existing steel pylon (reference EE42) near Llandyfaelog. The circuit then follows a north easterly alignment, crossing over the A48 dual carriageway, terminating at the terminal pole number 86 at Grid reference: SN

43515 19882 and connecting to the underground cables in Work No.2. The works are to include:

- i) works for the creation, alteration or widening of points of access to highways;
- ii) stopping up or diversion of highways;
- iii) the provision of means of access to pole and underground cable positions;
- iv) the provision of retaining structures, and culverts;
- v) carrying out surveys or taking soil samples;
- vi) works for the benefit or protection of land affected by the authorised development;
- vii) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots;
- viii) the removal, disposal or re-siting of apparatus;
- ix) carrying out civil engineering or other works;
- x) the provision of construction and maintenance compounds, working areas, laydown and parking areas in connection with the construction of the authorised development;
- xi) the provision of welfare units; and
- xii) the provision of underground ducting and placing electricity cables below ground to connect to Work No. 2.

2.6.2 Work No. 2 – The installation and keeping below ground of a 132kV electric line and fibre optic cable of approximately 3.3 kilometres in length. The 132kV underground cable section connections to Work No.1 at terminal pole number 86 at Grid reference: SN 43515 19882, passing under the River Towy in a northerly direction,

passing across the Towy valley through the cable joint bays at Grid references: SN43410 20334, SN43384 20826, SN43360 21308, SN43263 21739, SN43295 22116 and SN43308 22632, to the east of Carmarthen, passing underneath the A40, connecting into the public highway A485 at Grid reference: SN43213 22019, terminating east of Abergwili and connecting to Work No.3 at the overhead terminal pole number 87 at Grid reference: SN43036 22719. The works are to include:

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- i) works for the creation, alteration or widening of points of access to highways;
- ii) stopping up or diversion of highways;
- iii) the provision of means of access to pole and underground cable positions;
- iv) the provision of retaining structures, and culverts;
- v) carrying out surveys or taking soil samples;
- vi) works for the benefit or protection of land affected by the authorised development;
- vii) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots.
- viii) the removal, disposal or re-siting of apparatus;
- ix) carrying out civil engineering or other works;
- x) the provision of construction and maintenance compounds, working areas, laydown and parking areas in connection with the construction of the authorised development;
- xi) the provision of welfare units;
- xii) the provision of underground ducting and placing electricity cables



including horizontal directional drilling below ground, to connect to Work No.3; and

xiii) the provision of a temporary bridge.

2.6.3 Work No 3 – The installation and keeping of 132kV electric lines above ground of approximately 14.1 kilometres in length, comprising a three phase 132kV line (three wires/conductors and fibre optic cable) mounted on twin and single wooden poles with supporting stay wires, and terminal ends. The 132kV line commences at terminal pole number 87 at Grid reference: SN43036 22719, following a northerly line adjacent to the A485, turning east to the south of Alltwalis and terminating at terminal pole 203 at Grid reference: SN48811 31114, at the Brechfa Forest West Wind Farm substation. The works are to include:

- i) works for the creation, alteration or widening of points of access to highways;
- ii) stopping up or diversion of highways;
- iii) the provision of means of access to pole and underground cable positions;
- iv) the provision of retaining structures, and culverts;
- v) carrying out surveys or taking soil samples;
- vi) works for the benefit or protection of land affected by the authorised development;
- vii) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots;
- viii) the removal, disposal or re-siting of apparatus;
- ix) carrying out civil engineering or other works;
- x) the provision of construction and maintenance compounds, working areas, laydown and parking areas in connection with the construction

of the authorised development;

- xi) the provision of welfare units; and
- xii) the provision of underground ducting and placing electricity cables below ground to connect to Work No. 2.

2.7 As the proposed development is an NSIP, development consent must be obtained to authorise it, and any application for a development consent order must be made to the Secretary of State under section 37 of the Act.

### **Integral development**

2.8 Work No. 2 consists of an underground section of electricity cables. Paragraph 4.1 of the Advice Note 15 recommends that if the applicant is seeking development consent for an NSIP in Wales, sufficient explanation should be provided in the explanatory memorandum for why the applicant considers that all elements in the application can be included. This is particularly important given the limited scope of associated development for NSIPs in Wales.

2.9 Section 115 of the Act provides that consent can be granted for development for which development consent is required or associated development. Section 115(4) limits associated development in Wales to the carrying out of construction of surface works boreholes or pipes associated with development in subsection 17(3) (underground gas storage). Development that is considered to be associated development cannot be granted consent under the Act for an above ground electricity project in Wales. Powers to grant consent for such works being devolved to recognised government and determined by way of grant of planning permission pursuant to the Town and Country Planning Act 1990<sup>12</sup>.

2.10 Guidance on associated development has been issued by the Secretary of State<sup>13</sup>. This explains that the Secretary of State will decide on a case by case basis

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<sup>12</sup> 1990 c.8

<sup>13</sup> Department for Communities and Local Government, Planning Act 2008: Guidance on associated development applications for major infrastructure projects (April 2013)

whether or not development should be treated as associated development.

However this guidance only applies to projects in England.

- 2.11 The connection was initially proposed to be constructed as an overhead connection in full, predominantly on circa 15m height wooden "trident" poles along its whole length. A section crosses the River Towy valley, to the east of Carmarthen, designated as a Special Landscape Area, Site of Special Scientific Interest and Special Area of Conservation. WPD conducted an extensive technical and environmental appraisal process including consideration of the alternative option of undergrounding sections of the line. Details are outlined in Appendix 1.1 of the Brechfa Forest Connection Route Alignment Selection Report (August 2014)<sup>14</sup>. This examination was driven by the criteria set out in the National Policy Statement for Electricity Networks Infrastructure<sup>15</sup> ("EN-5"). Paragraph 2.8.8 of EN-5 provides that:

*'Paragraph 3.7.10 of EN-1 sets out the need for new electricity lines of 132kV and above, including overhead lines. Although Government expects that fulfilling this need through the development of overhead lines will often be appropriate, it recognises that there will be cases where this is not so. Where there are serious concerns about the potential adverse landscape and visual effects of the proposed overhead line, the [IPC] will have to balance these against other relevant factors including the need for the proposed infrastructure, the availability and the cost of alternative sites and routes and methods of installation (including undergrounding).'*

- 2.12 The "serious concern" test was adopted whereby consideration was given by WPD to the landscape and visual impacts of overhead lines. It was concluded that in the present case a complete overhead connection could result in an unacceptably high level of impact even with feasible mitigation and hence would be unlikely to receive consent. The specific sections identified as posing "serious concern" were further evaluated alongside environmental, technical and cost considerations, leading WPD to decide to underground the connection where it crosses the River Towy valley.

<sup>14</sup> Western Power Distribution, Route Alignment Selection Report – Brechfa Forest Connection Project (August 2014)

<sup>15</sup> Department of Energy & Climate Change, National Policy Statement for Electricity Networks Infrastructure (EN-5) (July 2011)

- 2.13 Whilst paragraph 2.8.4 of EN-5 states that proposed underground cables do not require development consent under the Act, the sub note to paragraph 2.8.8 states:
- ‘Proposed underground cables do not require development consent under the Planning Act, but they may form part of a scheme of new infrastructure which is the subject of an application under the Act, and requirements or obligations regarding undergrounding may feature as a means of mitigating some of the adverse impacts of a proposal which does require and is granted development consent.’*
- 2.14 The underground section of the proposed development forms part of the project mitigation. As a direct replacement of the overhead sections, the underground section is an integral part of the scheme. Section 31 of the Act provides that consent is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.
- 2.15 Government advice states that for the purposes of an environmental impact assessment (“EIA”), a particular planning application should not be considered in isolation if, in reality, it is properly to be regarded as an integral part of an inevitably more substantial development<sup>16</sup>. The proposed development will be considered as a whole for the purposes of environmental assessment. As the underground cable forms part of the mitigation of what is an EIA development it cannot proceed on its own as permitted development or being integral mitigation to the proposed development, as a separate development.
- 2.16 The Order further seeks, and requires that rights over land are acquired compulsorily to construct the underground cables. Sections 120(3) and 120(4) of the Act provide that an Order may make provision relating to, or to matters ancillary to, the development for which consent is granted and in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5. Part 1 of Schedule 5 includes the acquisition of land compulsorily or by agreement.

<sup>16</sup> Paragraph 46, Department for Communities and Local Government, Circular 02/99: Environmental Impact Assessment (12 March 1999) (note superseded by National Planning Practice Guidance for England only)

2.17 Additionally, paragraph 4.2 of Advice Note 15 advises that applicants engage with the Welsh Government at a sufficiently early point in the pre-application stage in relation to the scope of what is proposed to be included in the application. WPD entered into discussions with the Welsh Government at the earliest reasonably practicable opportunity.

2.18 A formal meeting was held on 3 March 2015 and this was followed up by an advice note detailing in full the justification for including the undergrounding as part of the Order. A copy of the advice note is provided at Appendix 1 of this document. In response to this note, the Welsh Government stated that:

*‘the Welsh Government’s interpretation is that for an element to be considered to “form part of” a NSIP [Section 31 PA 2008] it must be necessary to enable the construction, operation, or maintenance of the Nationally Significant Infrastructure Project. This is the installation of an 132kV electricity line between two identified points in this case. For electricity to flow from point A to point B (the purpose of the project) the cable needs to be continuous, and therefore it may be reasonable to conclude that the underground element is necessary to ensure that the NSIP can operate as intended. Consequently it may also be reasonable to conclude that this element could also be included within an application for development consent, and any subsequent DCO.’*

(A copy of the above correspondence is provided at Appendix 2 of this document).

2.19 Given the above, WPD considers that the underground section of the proposed development consists of development integral to the overhead line and is therefore included in the development for which, consent is sought and for which consent may be permitted, pursuant to the Act.

2.20 Section 16(3) provides that electric lines below 132kV are not NSIP’s. The guidance on associated development (noted above)<sup>17</sup> states that the diversion of other overhead lines is associated development. Rights to remove the existing apparatus that are crossed by the proposed development and therefore need to be re-sited

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<sup>17</sup> See footnote 13 above.

above and below ground are dealt with and assessed in technical Chapters 8 to 18 of the Environmental Statement and will be undertaken as part of the proposed development. However as the provision of new replacement electric lines could be considered to be associated development and whilst the guidance does not directly apply in Wales, WPD has taken the decision to deal with the replacement of existing apparatus (where relevant) as devolved development, which would either benefit from permitted development<sup>18</sup> and is therefore exempt from the requirements of planning permission or should it not be exempt, would require either planning permission or consent under section 37, Electricity Act. It therefore does not form part of the Application. However the land rights to undertake these works are ancillary to the authorised development, pursuant to section 120 and Schedule 5 of the Act and are included in the acquisition of land rights in the Order. Most particularly work (viii) of the authorised development (Schedule 1 of the Order) confers the necessary power of removal of these existing lines.

- 2.21 In the event that the diversion of existing apparatus was deemed to be part of a larger EIA development and not works within their own right, then a planning permission or section 37, Electricity Act consent, would be sought to undertake those works. Steps to clarify and obtain the necessary consents for these works are on-going. The removal of the lines and their replacement formed part of the pre-application consultation, details of which are reported in paragraphs 14.2.5 to 14.3.7 of the Consultation Report (Volume 5.1).

<sup>18</sup> See Overhead Lines (Exemption) (England and Wales) Regulations 2009 as amended by the Overhead Lines (Exempt Installations) (Consequential Provisions) Order 2010 and Section 16(3) of the Planning Act 2008 and the Town and Country Planning (General Permitted Development) Order 1995 Regulation 3(10) and 3(12) and Part 17 Class G (superseded only in England)

### 3. Compulsory acquisition powers

- 3.1 The Order contains powers to acquire rights compulsorily pursuant to section 120(4) and section 122 of the Act referred to in section 120 (3) as ancillary to the development for which consent is granted. It seeks powers including the creation of and acquisition of rights, necessary to construct, use and maintain the authorised development. A justification for these rights and restrictions is set out in the Statement of Reasons (Volume 4.1) that accompanies the Application.
- 3.2 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 Order has at its base the Model Provisions but significantly departs from the Model Provisions to reflect other Orders, both granted and in draft form for similar linear electric line schemes (referred to previously in paragraph 1.2). The provisions of the Order are now explained in sequence, notifying, where relevant, the departure from the Model Provisions.
- 4.2 The Model Provisions refer to “the authorised development” and “the ancillary works.” The Order does not use the term “ancillary works”. The Order adopts only the definition “authorised development” as all works deemed to be ancillary works (section 120 (3) and Schedule 5 of the Act) have been described in the definition of “authorised development” in Schedule 1 of the Order. Accordingly, references in the Model Provisions to “the authorised project” have been replaced in the Order by references to “the authorised development”.
- 4.3 Previous orders (for example, The Network Rail (North Doncaster Chord) Order 2012<sup>19</sup>; The Network Rail (Norton Bridge Area Improvements) Order 2014<sup>20</sup> and The National Grid (North London Reinforcement Project) Order 2014) have contained articles which contain a provision by which the promoter must obtain consent, agreement or approval from a third party before it may do something and that such consent, agreement or approval shall not be unreasonably withheld and also a longstop default provision to the effect that, if the relevant third party fails to respond, the consent, agreement or approval shall be deemed to have been given.
- 4.4 WPD considers this approach to be necessary to remove the possibility for undue delay and to provide certainty that the authorised development can be delivered in a timely fashion. This approach is also considered to be proportionate in that, having undertaken extensive pre-application consultation and the Order having been rigorously examined, the delivery of the authorised development should not be held up unreasonably, if it has been approved by the Secretary of State.

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<sup>19</sup> S.I 2012/2635

<sup>20</sup> S.I 2014/909



- 4.5 The draft Order includes, therefore, at Articles 12(6) (temporary closure of streets and public rights of way), 14(2) (formation and improvement of access to works), 16(8) (discharge of water into a watercourse, sewer or drain) and 18(6) (authority to survey and investigate land) a deemed consenting regime to apply whereby if a consent/approval, is required and no such consent/approval is provided within a set number of days of receiving an application for consent or approval, the consenting authority or person is deemed to have granted consent/approval. Section 150 of the Act provides that an order may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted only if the relevant body has consented to that inclusion of the provision. In respect of these matters, WPD has consulted Carmarthenshire County Council in respect of Article 12(6) and Article 14(2) powers and intends to reach agreement on these powers during the submission stage of the Application. WPD further intends to identify and agree the powers necessary under Article 16(8) and Article 18(6), with the relevant parties as identified as the details of the scheme are clarified further.

## 5. Part 1 – preliminary

### Article 1 (Citation and commencement)

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

### Article 2 (Interpretation)

5.2 Article 2(1) defines terms used in the remainder of the Order. The definitions used in the Model Provisions are amended and supplemented to reflect the particular circumstances of the development and changes to the Act which have been made since it was originally enacted.

5.3 A number of definitions are added, including:

- “the 1981 Act” which means the Compulsory Purchase (Vesting Declarations) Act 1981.
- “the 1984 Act” which means the Road Traffic Regulation Act 1984.
- “access and rights of ways plans” which has been included along with the other specific plan and drawing definitions following a suggestion of PINS at a pre-application meeting to discuss the provisions of the draft Order and explanatory memorandum, held on 4 March 2015.
- “archaeological written scheme of investigation”
- “business day” which means any day other than a Saturday Sunday which is not Christmas Day, Good Friday or a bank holiday as defined under section 1 of the Banking and Financial Dealings Act 1971.
- “CEMP” which means the construction environmental management plan.
- “CMS” which means the construction management strategy.
- “CTMP” which means the construction traffic management plan.
- “crown land plans”.
- “design drawings”.

- “deviation plan”.
- “dust management plan”.
- “electronic transmission” which has been included as Article 35 authorises the serving of notices under the Order by electronic transmission.
- “environmental features plans”
- “environmental statement” which has been included to define this term which is used throughout the Order.
- “flood consequence assessment”.
- “frac-out contingency plan”.
- “habitat management plan”.
- “heritage designation plans”
- “invasive weeds management plan”
- “limits of deviation” which are the limits within the Order limits which the authorised development is permitted to deviate (subject to Article 5) and reflects the normal approach of linear projects of this kind.
- “main river” which was added for the benefit of clarity when applying Article 16.
- “maintain” which is based on the suggested wording of the Examining Authority in their first written questions on the Draft National Grid (Hinkley Point C Connection Project) Development Consent Order 2015 (Q4.3). This definition ensures that no works are authorised that have not been previously assessed in the Environmental Statement, in accordance with paragraph 20 of Advice Note 15.
- “master key plan”.
- “Natural Resources Wales”.

- “operational use” which occurs when the part of the authorised development first transmits electricity at 132kV. This is required for the maintenance period relating to temporary use of land set out in Article 29.
- “overall location plan”.
- “pollution prevention and emergency response plan”.
- “public rights of way management strategy”.
- “relevant highway authority” which means either the South Wales Trunk Road Agency or Carmarthenshire County Council, whichever is appropriate.
- “requirement consultee” which is any body named in a Requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that Requirement.
- “the Requirements” which means those requirements set out in Schedule 3.
- “trees and hedges with the potential to be affected plans”.
- “transport assessment”.
- “water management plan” .
- “waste management plan” .

5.4 Existing definitions in the Model Provisions differ in the following respects:

- “authorised development” has been amended to exclude any reference to “associated development”. This reflects the current position in Wales where associated development connected with the proposed development cannot be granted development consent.
- “land plans” and “works plans” have been updated to reflect that the terms comprise multiple plans as opposed to single documents.
- “the Order limits” has been updated to refer to the relevant plans and the terms “authorised development” have replaced “authorised project”.

- “relevant planning authority” has been amended to refer to Carmarthenshire County Council who are the only local authority for area in which the project is situated.
- “statutory undertaker” is limited to persons falling within section 127 (8) of the 2008 Act. This amendment reflects the updated position following repeals by the Growth and Infrastructure Act 2013<sup>21</sup>.
- “undertaker” is defined as Western Power Distribution (South Wales) Plc.

5.5 Additionally, the following definitions within the Model Provisions have been excluded:

- “authorised project” has been omitted as unnecessary given the retention of the definition of “authorised development”. As noted in paragraph 4.2 above, all works deemed to be ancillary works (section 120 (3) of the Act and schedule 5) have been described in the definition of authorised development in Schedule 1 of the Order.
- “decision maker” has been removed and replaced with express references to the Secretary of State in all instances where their determination is required.
- “rights plans” has been removed and replaced with more specific plan titles (as referred to above).
- “the sections” has been replaced with the new definition of “the profiles” which more accurately reflects the plans to be submitted with the Application.
- “tree preservation order” has been excluded as no trees protected under a TPO are expected to be affected by the authorised development.
- “the tribunal” and “compulsory acquisition notice” are removed as the Order is only seeking the compulsory acquisition of rights not land or properties.

5.6 Article 2(2) expands the definition of rights over land in the Model Provisions to encompass all rights and restrictions required for the overhead electricity lines and

<sup>21</sup> Section 24 (1) of the Growth and Infrastructure Act 2013 c.27 repealed sections 128 and 129 of the Planning Act 2008 c.29

underground electricity cables placed within the Order land.

- 5.7 Article 2(3) defines measurements as approximate, in line with the wording of the Model Provisions. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order there is no issue over whether the works are permitted by the Order. This provision allows for a small tolerance with respect to any distances and points, although all works will take place within the limits of deviation. It is established practice to include such a provision in an act or instrument authorising linear infrastructure<sup>22</sup>.
- 5.8 Articles 2(4) to (5) are not included in the Model Provisions. Article 2(4) provides that areas given in the Book of Reference (Volume 4.3) (“the Book of Reference”) are approximate since the Book of Reference is outside the scope of article 2(3). Article 2(5) explains how references in the Order to letters or numbered points are to be construed.

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<sup>22</sup> See for example: The National Grid (King’s Lynn B Power Station Connection) Order 2013 and the National Grid (North London Reinforcement Project) Order 2014

## 6. Part 2 – principal powers

### Article 3 (Development consent granted by the Order)

- 6.1 This article is a modification of the Model Provisions.
- 6.2 Article 3 grants development consent for the authorised development and the ancillary works within the Order limits. The authorised development and ancillary works are described in Schedule 1. The authorised development means the development under sections 14(1) (b) and 16 of the Act; relevant integral development; the ancillary works authorised by section 120 of the Act; and the development consent is subject to the Requirements set out in Schedule 3.
- 6.3 Paragraph (1) grants development consent to WPD to carry out any of the authorised development.
- 6.4 Paragraph (2) of Article 3 reflects section 141 of the Act, and provides that WPD have authority to install and keep installed the above-ground electric lines and underground cables. This authority is provided in lieu of consent which would otherwise be required under section 37 of the Electricity Act 1989<sup>23</sup>.
- 6.5 Paragraph (3) of Article 3 confirms that WPD may use the electric lines and any other elements of the authorised development, as part of the electricity distribution network in Wales. The term “use” has been decided upon following pre consultation discussions with PINS around the earlier use of the term “operate” which only has current legislative definition in relation to generating and pumping stations. Examples include: The Hinkley Point C (Nuclear Generating Station) Order 2013, The National Grid (King’s Lynn B Power Station Connection) Order 2013 and The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>24</sup>. As the electric lines will carry electricity, the term “use” appears more appropriate in the context of the authorised development.

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<sup>23</sup> 1989 c.29

<sup>24</sup> S.I 2014/2384

- 6.6 Paragraph (4) confirms the limits of deviation within which the authorised development can be undertaken. This is explained further by reference to Article 5 below.

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

- 6.7 This article sets out the scope within which WPD may maintain the authorised development. It is identical to Article 3 of the Model Provisions save that reference is made to the “authorised development” as opposed to the “authorised project”.
- 6.8 “Maintain” is defined in Article 2. Defining the term maintain has precedence and is used in numerous orders including The National Grid (King’s Lynn B Power Station Connection) Order 2013 and The National Grid (North London Reinforcement Project) Order 2014. As explained above, the wording of this definition is based on that suggested by the Examining Authority in their first written questions on the Draft National Grid (Hinkley Point C Connection Project) Development Consent Order 2015.

#### **Article 5 (Limits of deviation)**

- 6.9 Article 5 differs from the Model Provisions and has as its basis a provision which is included in the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (the “TWA Model Provisions”) (Article 5)<sup>25</sup> and which is appropriate in the context of linear projects. These limits allow for a lateral deviation of works within the lines shown on the works plans (sub-paragraph (a)) and for a vertical deviation of the linear works within the levels set out in Requirement 3, Schedule 3, (sub-paragraph (b)). The purpose of this provision is to provide the necessary flexibility when constructing the authorised development, reducing the risk that the project as approved cannot later be implemented for unforeseen engineering or geological reasons.
- 6.10 The lateral limits of deviation are shown on the works plans and further referenced in Requirements 3, 5 and 6, (Schedule 3) and constrain the location of these works within the limits of deviation.

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<sup>25</sup> S.I 2006/1954



- 6.11 The vertical limits of deviation have been set to 2 metres upwards and any amount necessary or convenient downwards. Again, the purpose is to provide a necessary but proportionate degree of flexibility in the construction of the authorised development and to reduce risk. The reference to “...any extent downwards...” is taken from the Model Provisions for Railways (Article 6) and also the TWA Model Provisions and is common in linear projects. An element of flexibility in downwards deviation is required so that any construction can reflect extant ground conditions when the works are carried out.
- 6.12 A similar approach has been adopted on The National Grid (King’s Lynn B Power Station Connection) Order 2013, The National Grid (North London Reinforcement Project) Order 2014, The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015 and The North Wales Wind Farms Draft Connection Order 2015.

**Article 6 (Benefit of Order)**

- 6.13 This article is a departure from the Model Provisions (Article 4) and 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. Statutory powers may usually only be exercised by the body on whom they are conferred.
- 6.14 It is appropriate in this case, pursuant to paragraph (1) for the Order powers, subject to Article 7 (Consent to transfer benefit of Order) to be exercised only by WPD. 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 revised article confirms this position.
- 6.15 Despite the above, paragraph (2) provides flexibility so that the benefit of the Order can be applied to parties other than WPD. This applies where the consent granted is expressed to be for the benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

- 6.16 There is precedent for this approach in The National Grid (North London Reinforcement Project) Order 2014.

**Article 7 (Consent to transfer benefit of Order)**

- 6.17 This article allows any or all of the benefits of the provision of the Order to be transferred, with the consent of the Secretary of State, to others.
- 6.18 Paragraph (1) confers the relevant powers to grant and transfer the benefit of the provisions of the Order, whilst paragraph (2) clarifies where references to “the undertaker” include “the transferee” or “the lessee”.
- 6.19 Article 7(3) ensures that any other party that exercises any benefits of rights conferred on it by any transfer or grant, is subject to the same restrictions, liabilities and obligations as would apply if those benefits and rights were exercised by WPD.
- 6.20 This article is identical to the wording of the Model Provisions save for the insertion of the appropriate body, this being the Secretary of State to reflect the agreed position in recently made Development Consent Orders.

**Article 8 (Application and modification of Hedgerow Regulations 1997)**

- 6.21 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.
- 6.22 This article modifies the Hedgerow Regulations 1997<sup>26</sup> for the purposes of carrying out the authorised development. The modification 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.
- 6.23 Recent authority for this particular modification includes The North Wales Wind Farms Draft Connection Order 2015.

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<sup>26</sup> S.I.1997/1160



## 7. Part 3 – Streets

### **Article 9 (Application of New Roads and Street Works Act 1991)**

- 7.1 This article is a departure from the Model Provisions with paragraph (1) providing that all highways works carried out under the Order are to be treated as “major highways works” where they comprise tunnelling or boring under the highway or works carried out in the exercise of powers under section 184 Highways Act 1980<sup>27</sup> (vehicle crossings over footways and verges).
- 7.2 Paragraph (2) further states that the relevant provisions of the New Roads and Street Works Act 1991<sup>28</sup> (“the 1991 Act”) shall apply to a temporary closure of a street under article 12, even if no street works (within the meaning of the 1991 Act) are being carried out. This would, for example, require WPD to make arrangements, so far as practicable, for utilities to gain access to their apparatus.
- 7.3 Paragraph (3) expands Article 8 (3) of the Model Provisions which provides that the provisions of sections 54 to 106 of the 1991 Act will apply. The intention, it is assumed, behind Article 8 (3) is to ensure that the relevant provisions of the 1991 Act which apply to street works apply also to other works in streets authorised by this article. It seems more sensible to extend Article 9 which applies selected provisions of the 1991 Act to the temporary closure of streets even if no street works (within the meaning of the 1991 Act) are being carried out.
- 7.4 The above amendment prevents confusion as to whether works in respect of a temporarily closed street are ‘street works’ for the purposes of the 1991 Act and also simplifies the implementation of those works by providing for a single process in respect of streets which are closed and those which are not.
- 7.5 Comparable provisions have been included in the TWA Model Provisions and have also appeared in The National Grid (King’s Lynn B Power Station Connection) Order 2013, The National Grid (Hinkley Point C Connection) Draft Development

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<sup>27</sup> 1980 c.66

<sup>28</sup> 1991 c.22

Consent Order 2015 and the National Grid (North London Reinforcement Project) Order 2014.

**Article 10 (Street works)**

- 7.6 This article allows works to be carried out in or upon streets identified in Schedule 6 within the Order limits and follows the Model Provisions save for the variations listed below.
- 7.7 New paragraph (1) (e) incorporates an additional power to place and keep scaffolding during the construction and installation of the development. This expands upon the powers provided in the Model Provisions but is considered necessary for the authorised development and mirrors similar rights inserted in The North Wales Wind Farms Draft Connection Order 2015.
- 7.8 Paragraph (1) (f) provides for the strengthening, improving, repairing or reconstructing of streets. This similarly expands upon the powers conferred in the Model Provisions but is regarded as necessary for the authorised development and follows similar wording to the rights provided in The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 7.9 A new paragraph (1) (g) is added to reflect the street works powers available to the undertaker in paragraph 1 (b) (iii) of Schedule 4 to the Electricity Act.
- 7.10 As explained above, Article 8(3) of the Model Provisions is deleted and replaced with a standalone clause (Article 9) which only applies certain provisions of the 1991 Act.
- 7.11 Paragraph (2) provides that the authority given by paragraph (1) is a statutory right for the purposes of section 48(3) (Streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991 which means that the Order replaces the need to apply for a street works licence under that Act.

- 7.12 A new paragraph (3) has been included to make it clear that any powers conferred by Article 10 do not prejudice those granted under the Electricity Act.
- 7.13 Paragraph (4) clarifies the meaning of “apparatus” and is identical to the Model Provisions.

**Article 11 (Construction and maintenance of new or altered means of access)**

- 7.14 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 will then be maintained by the highways authority. Those parts of the new or altered streets which are not intended to be public highway will then be maintained by the street authority. There are separate provisions to reflect this in paragraphs (1) and (2).
- 7.15 Paragraphs (3) and (4) mirror the defence in section 58 of the Highways Act 1980 which applies to highways authorities in cases of non-repair of highways. This defence is available 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.
- 7.16 The article is not one of the Model Provisions but has precedent in The National Grid (North London Reinforcement Project) Order 2014 and The North Wales Wind Farms Draft Connection Order 2015.

**Article 12 (Temporary closure of streets and public rights of way)**

- 7.17 This article, and Schedule 7 to which it relates, depart from the Model Provisions in a number of ways. In particular, Article 12 has been expanded to deal also with all public rights of way. The Model Provisions only provide for the permanent stopping up of streets. This approach was adopted in The National Grid (King’s Lynn B Power Station Connection) Order 2013 and is followed in The National Grid (Hinkley Point C Connection) Draft Development Consent Order 2015 and The North Wales Wind Farms Draft Connection Order 2015.

- 7.18 Paragraph (1) of this article provides for the temporary closure, alteration or diversion of streets or public rights of way shown on the access and rights of way plans or within the Order limits.
- 7.19 A new paragraph (2) confers a power on WPD to use a street and public right of way which has been temporarily closed, altered or diverted as a temporary working site. This provision has precedent in orders made under the Transport and Works Act 1992<sup>29</sup> including: The Network Rail (Thameslink 2000) Order 2006<sup>30</sup>, The Network Rail (Nuneaton North Chord) Order 2010<sup>31</sup> and The Network Rail (Hitchin (Cambridge Junction) Order 2011<sup>32</sup>.
- 7.20 Paragraph (3) has been amended to make it clear that WPD, when closing streets or public rights of way, may provide temporary diversion in relation to the streets and public rights of way listed in Schedule 7.
- 7.21 Paragraph (4) compliments the specific works power by referring to the letters and numbers listed in Schedule 7.
- 7.22 Pursuant to paragraph (5), for streets and public rights of way listed in Schedule 7, WPD must first consult the relevant street authority. In relation to streets and public rights of way not listed in the schedule, the consent of the street authority (which may impose reasonable conditions) must be obtained.
- 7.23 Paragraph (6) provides a deemed consent mechanism where the street authority fails to notify WPD of its decision within 42 days of receiving an application for consent under paragraph (5). Unlike the TWA Model Provisions, the Model Provisions do not refer to consent not being unreasonably withheld here. Given this, this amendment is necessary to prevent unreasonable delays to the authorised development and there is precedent for it in The National Grid (King's Lynn B Power Station Connection) Order 2013 and The National Grid (Hinkley Point C Connection) Draft Development Consent Order 2015.

<sup>29</sup> 1992 c.42

<sup>30</sup> S.I 2006/3117

<sup>31</sup> S.I 2010/1721

<sup>32</sup> S.I 2011/1072

### **Article 13 (Traffic regulation)**

- 7.24 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.
- 7.25 Traffic regulation measures specified under paragraph (1) include: restrictions on stopping, parking, waiting, loading and unloading, authorising the use of parking places and provisions relating to the direction and priority of vehicular traffic.
- 7.26 Paragraph (2) requires WPD to provide at least 4 weeks' written notice and in certain instances, to advertise its intention in a manner specified by the traffic authority.
- 7.27 Paragraph (3) confirms the effect of any provision made under this article and paragraph (4) provides clarity as to the meaning of certain expressions.
- 7.28 A further provision has been added at paragraph (5) to provide that consent from the traffic authority is deemed to have been given if the authority fails to notify WPD of its decision within 56 days of receipt of the application. This prevents unreasonable delays to the authorised development.
- 7.29 The article is not in the Model Provisions but there is precedence for it in draft development consent orders such as The National Grid (Hinkley Point C Connection) Draft Development Consent Order 2015 and The North Wales Wind Farms Draft Connection Order 2015. The article has further authority in orders made under the TWA<sup>33</sup>. Article 13 is considered necessary to ensure that the authorised development can be constructed without unnecessary delay.

### **Article 14 (Access to works)**

- 7.30 This article allows WPD to provide or form means of accesses to and from public highways within the Order limits.

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<sup>33</sup> See for example: The Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I 2011/1072) and The Network Rail (Norton Bridge Area Improvements Order) 2014 (S.I 2014/909)



- 7.31 The power is conferred by paragraph (1) of this article and requires WPD to first obtain the consent of the relevant planning authority, following consultation with the highway authority.
- 7.32 This differs from the Model Provisions which make reference to both a general and specific power to be granted by the Order. Here WPD is only seeking a general power and has relied on the authority of similar orders including The National Grid (Hinkley Point C Connection) Draft Development Consent Order 2015 and The North Wales Wind Farms Draft Connection Order 2015.
- 7.33 Additionally, under paragraph (2) if the authority fails to respond to the application within 42 days it will be deemed to have granted consent. This is a further amendment to the Model Provisions and has precedent in The National Grid (North London Reinforcement Project) Order 2014 and The National Grid (King's Lynn B Power Station Connection) Order 2013. This provision is included to prevent unnecessary delays to the authorised development.

#### **Article 15 (Agreements with street authorities)**

- 7.34 This article allows WPD and the relevant street authority to enter into agreements about the street works necessitated by the project which would allow the local authority to carry out such works under the terms of that agreement.
- 7.35 This power is separate to any agreements made under section 278 of the Highways Act 1980 which do not relate to powers under the Order but to a local authority devolving its powers (under section 278 of that Act).
- 7.36 Specifically, paragraph (1) lists the type of works that can be the subject of such agreements and paragraph (2) refers to certain provisions that may be included within the agreements.
- 7.37 The article is based on the wording of Article 13 of the Model Provisions and The National Grid (North London Reinforcement Project) Order 2014, save that it excludes agreements regarding the “construction of new streets” or “maintenance of structures of any bridges or tunnels” and the terms “temporary closure” replace

"stopping up". Additionally the list in paragraph (1) has been expanded to include the "strengthening, improvement, repair or reconstruction" of any street. This is a necessary power given the particular circumstances of the authorised development.

## 8. Part 4 – Supplemental powers

### Article 16 (Discharge of water)

- 8.1 This article sets out the circumstances in which WPD is entitled to discharge water into a sewer, drain or watercourse. Pursuant to paragraphs (1) and (3), this can be done with the consent of the owner of the sewer, drain or watercourse.
- 8.2 Paragraph (2) incorporates the exact wording of the Model Provisions and provides that disputes relating to the connections or use of public sewers or drains under paragraph (1) are disputes within section 106 of the Water Industry Act 1991<sup>34</sup>.
- 8.3 Paragraphs (4) to (6) provide further protection provisions and their wording mirrors that adopted in the Model Provisions.
- 8.4 Paragraph (7) updates the Model Provisions to reflect the repeal of section 85 of the Water Resources Act 1991 and its replacement by the Environmental Permitting (England and Wales) Regulations 2010<sup>35</sup>.
- 8.5 Paragraph (8) has also been added to provide that if an authority fails to respond within 28 days of an application for approval or consent under this article it shall be deemed to have been given or granted. This mirrors the wording used in The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015 and is included in an effort to prevent unreasonable delays in discharging sewers and watercourses.

### Article 17 (Defence to proceedings in respect of statutory nuisance)

- 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 project and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974<sup>36</sup> or cannot

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<sup>34</sup> 1991 c.56

<sup>35</sup> S.I. 2010/675

<sup>36</sup> 1974 c.40

reasonably be avoided, or the use of the project and is in accordance with any scheme of monitoring or attenuation of noise agreed with the relevant local authority or cannot reasonably be avoided.

- 8.7 The wording in paragraphs (1) and (2) of this article mirrors that of the Model Provisions except that paragraph (1)(b)(i) has been removed as it relates to “premises” which is not relevant for the purposes of constructing and operating the 132kV overhead line.

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

- 8.8 This article confers the power under paragraph (1) to enter land within the Order limits for the purpose of surveying or investigating it, including a power to make trial holes and carry out ecological or archaeological investigations and to use and leave apparatus on the land for these purposes. As an amendment to the Model Provisions, in paragraph (1) (b) the terms “on the land” have been added.
- 8.9 Under paragraph (2), the power of entry is subject to a requirement to give 14 days’ notice to owners and occupiers of the land. Additionally the power to make trial holes is restricted in respect of highways or streets and requires the consent of the relevant highway or street authority (pursuant to paragraph (4)).
- 8.10 Paragraph (3) provides that compensation is payable for any loss or damage as a result of the exercise of this power. Here the terms “before or after” have been added at (3) (a) and to the wording of the Model Provisions to show that the proof of authority does not have to precede entry onto the land. This addition assists in preventing unnecessary delays to WPD’s entry onto land.
- 8.11 A further provision has been added at paragraph (6), with the effect that consent from the relevant highway or street authority is deemed to have been given if the authority fails to notify WPD of its decision within 28 days of receipt of the application. This is identical to the wording adopted in The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015 and is

included in an attempt to avoid unreasonable delays to land surveys and investigations.

- 8.12 Finally paragraph (7) imposes an obligation on the undertaker to remove all vehicles and equipment and restore the land (to the reasonable satisfaction of the owners) within a reasonable period following completion of the survey/investigation. This is based on the wording of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and was inserted on the recommendation of PINS at the pre application meeting held on 4 March 2015.

## 9. Part 5 – Powers of acquisition

### **Article 19 (Application and modification of legislative provisions)**

- 9.1 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. Section 126 (2) allows the modification of compensation provisions to the extent necessary to apply the provision to the compulsory acquisition of a right in land authorised by the order.
- 9.2 Under this power, Article 19 provides that the legislative provisions relating to compensation for compulsory purchase apply, with certain modifications in cases where the Order authorises the compulsory acquisition of a right by the creation of a new right. The modifications which apply in these circumstances are set out in Schedule 4.
- 9.3 The wording of this article arises from but modifies the Model Provisions. There is legislative authority for similar provisions in The National Grid (King's Lynn B Power Station Connection) Order 2013 and the wording more particularly mirrors that used in The North Wales Wind Farms Draft Connection Order 2015, which refers to both the creation of rights and imposition of restrictions.

### **Article 20 (Compulsory acquisition of rights in, under or over land)**

- 9.4 This article authorises the compulsory acquisition of rights in respect of the Order land described in the Book of Reference, for the construction, use and maintenance of the authorised development or such rights that are ancillary or incidental to or necessary to facilitate the authorised development. This article amends the Model Provisions and authorises the acquisition of rights only (within paragraph (1)) because no land is proposed to be acquired as part of the proposed development.
- 9.5 Specifically, paragraph (2) provides that the acquisition of rights in, under or over land can include the creation of and acquisition of a new right in that land. This is necessary to avoid the need to acquire the land and accords with the compulsory

acquisition provisions contained within the Act which include references to the “creation of a new right”.

- 9.6 Paragraph (3) enables the undertaker to impose restrictions (as described in the Book of Reference) in, under or over the Order land for the purposes of the authorised development. This power to impose restrictions on the use of land is considered a proportionate means of protecting the authorised development whilst minimising the extent of land in, under or over which rights will be compulsorily acquired. This power has appeared in orders made under the Transport and Works Act 1992<sup>37</sup>, particularly in the context where it is necessary to restrict use of land or airspace above or beneath an authorised development which consists of a viaduct or tunnel. The power to impose restrictions is appropriate in the context of the Brechfa Forest Connection Project to restrict the use of land or airspace above or beneath the overhead electric lines or underground cables. The plots and the restrictions to be imposed are confirmed and described in the Book of Reference.
- 9.7 Paragraph (4) reinforces that the application of this article is subject to the provisions contained in Article 28 (temporary use of land by the undertaker).
- 9.8 Paragraph (5) provides that where the undertaker needs to acquire rights in, under or over land or impose a restriction, it shall not be obliged to acquire any greater interest in that land. This is consistent with the Model Provisions (Article 21).
- 9.9 Paragraphs (6) and (7) provide that WPD, with the consent of the Secretary of State, may transfer to statutory undertakers its power to acquire rights or impose restrictions, where the diversion, replacement or protection of apparatus of a particular statutory undertaker is required on Order land. The benefit of this is that it would avoid possible delay and uncertainty by statutory undertakers being required to exercise their own powers. For them to do so would be unnecessary given that the action taken would be no different than if the powers were created within this Order. Precedent for these provisions includes The National Grid (Hinkley Point C

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<sup>37</sup> See for example The Network Rail (Huyton) Order 2014 (S.I. 2014/2027) where the power was conferred to impose restrictive covenants over land.

Connection Project) Draft Development Consent Order 2015 and The Network Rail (Norton Bridge Area Improvements) Order 2014.

- 9.10 By paragraphs (8) and (9), the position regarding the acquisition of interests in Crown land has also been made clear. These provide that no interest in Crown land may be acquired pursuant to this Order without the appropriate Crown authority consenting to such acquisition. Whilst the relevance of these paragraphs was raised by PINS in the pre-application meeting on 4 March 2015, WPD considers their inclusion to be necessary for completeness. There is further authority for similar provisions in established orders including The Able Marine Energy Park Development Consent Order 2014<sup>38</sup>.
- 9.11 Paragraphs (2) and (4) of Article 21 of the Model Provisions have been excluded as similar provision has instead been made in Article 24 (extinguishment and suspension of private rights).

**Article 21 (Statutory authority to override easements and other rights)**

- 9.12 For the avoidance of doubt, this article provides that, by virtue of section 158 of the Act, in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, WPD may interfere with any interest or right to which the article applies or breach a restriction as to the use of land arising by virtue of a contract.
- 9.13 The above power is specifically conferred by paragraph (1), with paragraph (3) clarifying the definition of the interests and rights to which this article applies.
- 9.14 Provision is also made for the payment of compensation under paragraphs (2), (4) and (5). These include the proviso that, by virtue of section 152 of the Act, compensation may be payable (under section 10 of the Compulsory Purchase Act 1965<sup>39</sup>) for any such interference or breach.

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<sup>38</sup> S.I 2014/ 2935

<sup>39</sup> 1965 c.56



- 9.15 Article 21 is not one of the Model Provisions, but is added to clarify the position with regard to rights burdening land required for the authorised development. The same wording appears in The Hinkley Point C (Nuclear Generating Station) Order 2013<sup>40</sup>, The Rookery South (Resource Recovery Facility) Order 2011 and The North Wales Wind Farms Draft Connection Order 2015.

**Article 22 (Compulsory acquisition of land - incorporation of the mineral code)**

- 9.16 This article is based on the Model Provisions and takes the option of incorporating Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981<sup>41</sup> rather than just Part 2. (Part 3 provides the procedure for the owner wishing to work the mines or minerals). By incorporating the two parts of the named schedule, this article exempts existing rights in minerals from the scope of compulsory acquisition and deals with the situation where the owner of mines or minerals wishes to work them.
- 9.17 Similar provisions have been included in The National Grid (North London Reinforcement Project) Order 2014 and The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015.

**Article 23 (Time limit for exercise of authority to acquire rights in land compulsorily)**

- 9.18 This article gives WPD five years to issue ‘notices to treat’ or a ‘general vesting declaration’ to acquire rights in the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring rights in land could be undertaken should this Order be made.
- 9.19 Paragraph (2) includes a proviso that WPD may remain in temporary possession pursuant to Article 28 (temporary use of land by the undertaker) after the expiration of the five years.

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<sup>40</sup> S.I 2013/648

<sup>41</sup> 1981 c.67

9.20 This article mirrors the wording of Article 26 of the Model Provisions except that references to the acquisition of land are replaced with the acquisition of rights in land to reflect the nature of the authorised development.

**Article 24 (Extinguishment and suspension of private rights)**

9.21 As outlined above in the commentary to Article 20, this article has at its basis Article 22 of the Model Provisions but this is expanded so as to apply to private rights generally and not just private rights of way. This ensures that any other rights that may exist cannot prevent the implementation or use of the authorised development. This follows the approach in The Rookery South (Resource Recovery Facility) Order 2011.

9.22 Paragraph (1) provides for the extinguishment of private rights or restrictive covenants over land subject to compulsory acquisition of rights or the imposition of restrictions. This mirrors the Model Provisions save that the proviso is added that this will only be “in so far as the continuance [of such rights/restrictive covenants] would be inconsistent with the exercise of the right acquired or burden of the restriction imposed”.

9.23 Paragraph (2) provides that all private rights and restrictive covenants over land that is temporarily occupied by WPD are suspended and unenforceable for the duration of the occupation (save as provided for in other provisions of this article). This mirrors the wording of the Model Provisions.

9.24 Paragraph (3) makes provision in relation to the payment of compensation. There is a saving for statutory undertakers under paragraph (4). These provisions are consistent with the wording of the Model Provisions.

9.25 The above powers are additionally qualified by paragraphs (5) and (6) which provide for notices to be served or agreements entered into that would have the effect of restricting such rights. These use as their basis the wording in the Model Provisions.

9.26 For clarity, a definition of private rights is added by a new paragraph (7). This builds on the definition of rights given in the Model Provisions and includes the wider definition used in The Rookery South (Resource Recovery Facility) Order 2011. This further reflects the wording of section 237 of the Town and Country Planning Act 1990.

**Article 25 (Extinguishment of private rights and restrictive covenants relating to undertaker's apparatus removed from land subject to temporary possession)**

9.27 This provision applies to the exercise of the power in Article 28 below, relating to the temporary possession of land by WPD. By virtue of paragraph (1), all private rights and restrictive covenants relating to apparatus removed from such land are extinguished when WPD no longer remains in lawful possession of that land.

9.28 This article goes beyond the Model Provisions and is based on the wording of The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015.

**Article 26 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)**

9.29 This article provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>42</sup> which contains vesting procedures for land subject to compulsory purchase.

9.30 The article is identical to the Model Provisions save that references to "the Compulsory Purchase (Vesting Declarations) Act 1981" read "the 1981 Act".

**Article 27 (Rights under or over streets)**

9.31 This article provides that WPD may enter and use streets within the Order limits for the authorised development.

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<sup>42</sup> 1981 c.66

- 9.32 The above power conferred by paragraph (1) is qualified by the proviso in paragraph (2) that in exercising such rights WPD is not required to acquire any part of the street or any easement or right in the street.
- 9.33 Pursuant to paragraph (4), compensation is payable to persons who suffer losses as a result of the exercise of this power. There is a saving in paragraph (5) relating to statutory undertakers.
- 9.34 The wording of the above provisions is identical to the Model Provisions.

**Article 28 (Temporary use of land by the undertaker)**

- 9.35 This article follows in part the Model Provisions and allows the land set out in Schedule 8 to be occupied temporarily by WPD whilst the works are being carried out.
- 9.36 The core powers are set out in paragraph (1) of this article and these follow the Model Provisions save that they insert a new paragraph (1) (a) (ii) which allows WPD to also take temporary possession of any of the Order land which may be subject to compulsory acquisition of rights but in respect of which WPD has not yet served a notice of entry or made a general vesting declaration. This provision has appeared in Orders made under the Transport and Works Act 1992<sup>43</sup> and is necessary to prevent unreasonable delays to the development.
- 9.37 This article permits WPD to occupy land to construct the authorised development without having to acquire the land, or a right over the land. Once constructed, rights in the land may be compulsorily acquired. This means that WPD would be able to compulsorily acquire rights to retain, use and maintain the authorised development over an area of land which matches the final footprint of the authorised development. This provides flexibility to WPD and, for the landowner, minimises the area of land required for the compulsory acquisition of rights, which has a lesser impact on the landowner. There is a consequential amendment to paragraph (3) to

<sup>43</sup> See for example: The Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072) and The London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102)

refer to the two different categories of land following the insertion of a new paragraph (1) (a) (ii) above.

- 9.38 Further amendments to paragraph (1) include: an amendment to the right to removal to include the removal of electrical lines, plant structures and apparatus in paragraph (1) (b). The reference to works in paragraph (1) (c) has been expanded beyond just temporary works. A new paragraph (1)(d) has been also been added to the Model Provisions to allow the works specified in Schedule 8 or other mitigation works to be carried out. These expanded provisions derive authority from similar articles in The North Wales Wind Farms Draft Connection Order 2015 and The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015.
- 9.39 The provisions in paragraphs (2) and (3) mirror the Model Provisions save for the inclusion of the additional category of land inserted in paragraph (1) (a)(ii) above.
- 9.40 A new paragraph (4) imposes an additional obligation on WPD to provide written notice of the date of completion of the works for which temporary possession has been taken under this article.
- 9.41 Paragraph (5) provides that before giving up temporary possession of land listed in Schedule 8, WPD must remove all temporary works and restore the land save that WPD are not required to replace a building removed under this paragraph.
- 9.42 Paragraphs (6) and (7) deal with the compensation provisions in respect of the rights in this article and they mirror the wording of the Model Provisions.
- 9.43 Paragraph (8) has updated the Model Provisions to make clear that compensation payable under this article is compensation payable for injurious affection which would normally arise under section 10 of the Compulsory Purchase Act 1965 but which, by virtue of section 125(3)(b) of the Act is payable under section 152 of the Act instead.

- 9.44 Paragraphs (9) and (10) continue with the wording of the Model Provisions.
- 9.45 An additional paragraph (11) is included to make clear that the power in this article can be exercised on more than one occasion. This change is intended to clarify the intention behind the Model Provisions rather than to expand their scope. There is precedent for this additional provision in The Hinkley Point C (Nuclear Generating Station) Order 2013 and The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015.

**Article 29 (Temporary use of land for maintaining authorised development)**

- 9.46 This article provides for entry upon, and the taking of temporary possession of, land within the Order limits.
- 9.47 This power in paragraph (1) can only be exercised for so long as it is reasonably required to maintain the authorised development (pursuant to paragraph (3))
- 9.48 Under paragraph (2), WPD must provide at least 28 days' notice before entering on and taking temporary possession of land. A further obligation for restoration is imposed before temporary possession can be given up (paragraph (4)).
- 9.49 Compensation provisions have been included at paragraphs (5) to (7) and paragraph (8) confirms that the exercise of powers under this article does not oblige WPD to acquire the land or any interest in it.
- 9.50 The article (including all paragraphs above) follows the Model Provisions save that paragraph (1) (c) extends them to include a right to enter on to the land for the purpose of gaining access to maintain the authorised development. This is regarded as a necessary expansion and compliments the maintenance powers set out in paragraph (1) (a).

**Article 30 (Statutory undertakers)**

- 9.51 This article allows the undertaker to acquire, within the Order limits, rights from statutory undertakers (i.e. utilities such as electricity and gas companies) to be

agreed and then included and to extinguish their rights over land. The article gives effect to and is made subject to the protective provisions set out in Schedule 9.

9.52 The article is based on the Model Provisions, with the following changes:

- The article gives effect to and is made subject to the protective provisions (Schedule 9). This is added to reinforce the effect of the protective provisions on the statutory undertakers. It is identical to the wording used in The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015 and The National Grid (North London Reinforcement Project) Order 2014.
- The text in sub-paragraph (a) applies the wording of subparagraph (c) of the Model Provisions but has been extended to include a power to impose restrictions over the Order land.
- The text in sub-paragraph (b) referring to the plans is replaced with a reference to the Order land, meaning that it is not restricted to apparatus which has been specifically shown on the plans and described in the Book of Reference. It is not practicable to show and describe all such apparatus and so a general power is required for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land. As the land where this power may be exercised is shown on the land plans, and the beneficiaries of such rights are described in the Book of Reference, the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the APFP are satisfied by this revised wording.
- Sub paragraph (a) of the Model Provisions has been deleted as no land is proposed to be acquired as part of the authorised development.

### **Article 31 (Recovery of costs of new connections)**

- 9.53 This article is based on Article 33 of the Model Provisions and provides for compensation to be paid to owners or occupiers of property whose supply is affected by the removal of apparatus in accordance with Article 30.
- 9.54 Paragraph (2) of this provision further qualifies the general right to recover compensation under paragraph (1) in cases of public sewers.
- 9.55 Definitions of terms relevant to this article are clarified in paragraph (3).
- 9.56 The wording is identical to the Model Provisions, save that paragraph (3) of Article 33 has been deleted as it refers to provisions relating to the permanent stopping up of streets which is not relevant in the context of the authorised development.



## 10 Part 6 – Miscellaneous and general

### **Article 32 (Operational land for the purposes of 1990 Act)**

- 10.1 This article declares that the development consent granted by the Order shall be treated as specific planning permission for the purposes of determining operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990.
- 10.2 The article is identical to the Model Provisions (Article 36).

### **Article 33 (Felling or lopping of trees and removal of hedgerows)**

- 10.3 This article allows any tree or shrub that is near the authorised development to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the project or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 10.4 This is based on but is a modification of the Model Provisions.
- 10.5 Paragraph (1) amends the Model Provisions so it is clear that the power extends to trees or shrubs that are “within or encroaching upon the Order limits”. This amendment has been made upon the recommendation of PINS at the meeting held on 4 March 2015. The Model Provisions have also been modified by the deletion of “passengers” which is not relevant to the authorised development.
- 10.6 Provisions relating to compensation are set out in paragraphs (2) and (3) and these are identical to the Model Provisions.
- 10.7 New paragraphs (4) and (5) have been inserted to provide the additional power for WPD to remove hedgerows. Distinction is made here between hedgerows and important hedgerows in accordance with the provisions of the Hedgerow Regulations 1997<sup>44</sup>. Precedent for this power includes The North Wales Wind Farms Draft Connection Order 2015 and it is drafted in accordance with Advice

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<sup>44</sup> S.I 1997/1160

Note 15 (most particularly paragraph 24 and the “good practice point” on hedgerows).

#### **Article 34 (Certification of plans)**

- 10.8 This article requires the undertaker to submit the final versions of the plans and documents referred to in the Order for certification to the Secretary of State under paragraph (1).
- 10.9 Paragraph (2) confirms that such plans/documents shall be admissible as evidence of their contents in any proceedings.
- 10.10 The article is based on Article 14 of the Model Provisions which has been amended (on the recommendation of PINS) to refer to the specific names of the plans, drawings and documents that form part of the Application. Express reference is also made to the Secretary of State rather than adopting the Model Provisions general definition of “the decision maker”.

#### **Article 35 (Service of notices)**

- 10.11 This article governs how any notices that may be served under the Order shall be deemed to have been served properly. In particular, it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.
- 10.12 Although the article is not in the Model Provisions it is common to have such an article in an order authorising development such as this. It is also based on a similar provision included in the TWA Model Provisions. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act would not apply to notices served under a development consent order.
- 10.13 Equivalent provisions are also included in The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015 and The National Grid (King’s Lynn B Power Station Connection) Order 2013.

### **Article 36 (Arbitration)**

- 10.14 This article governs what happens when two parties disagree over the implementation of any provision of the Order. The matter is to be settled by arbitration, and if the parties cannot agree on whom the arbitrator should be, this is decided by the Secretary of State.
- 10.15 The article is based on Article 42 of the Model Provisions, with the insertion of the Secretary of State as the appropriate body to reflect the agreed position in recently made Development Consent Orders.

### **Article 37 (Procedure regarding certain approvals)**

- 10.16 This article contains additional provisions in respect of any approval, consent or agreement which is required to be given under the Order.
- 10.17 Paragraph (1) provides that any such approval, consent or agreement given by the relevant body must be given in writing and should not be unreasonably withheld or delayed.
- 10.18 Paragraph (2) further 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 3 and any other consents required under the Order. The article clarifies the procedure which applies in respect of these additional consents.
- 10.19 This article and associated Schedule 10 reflect the approach taken in The National Grid (North London Reinforcement Project) Order 2014 and The Hinkley Point C (Nuclear Generating Station) Order 2013.
- 10.20 This appeal process is considered proportionate and justified in light of the size and scale of the authorised development proposed by the Order to ensure the delivery of the authorised development.

## 11. Schedules

### **Schedule 1 (Authorised development)**

- 11.1 This specifies numbered works comprised in the authorised development (the NSIP) for which development consent is sought. The works should be read alongside the works plans.

### **Schedule 2 (Plans)**

- 11.2 This lists the various plans submitted with the Application and to be certified by the Secretary of State.

### **Schedule 3 (Requirements)**

- 11.3 This contains draft requirements corresponding to conditions which, under section 120(2) of the Act, could have been imposed of the grant of planning permission for the authorised development had it not fallen within the regime of the Act. The requirements have a similar purpose to planning conditions.
- 11.4 This schedule is based on Schedule 3 of The National Grid (North London Reinforcement Project) Order 2014 and Schedule 14 of The Hinkley Point C (Nuclear Generating Station) Order 2013 and Schedule 3 of The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015 where relevant.
- 11.5 As part of the review of the Order, WPD has further considered the requirements that apply in The Brechfa Forest West Wind Farm Order 2013<sup>45</sup>. In order to ensure consistency across the entire scheme, the requirements considered to be of most relevance to this Order have also been incorporated into Schedule 3.
- 11.6 There are 29 requirements contained within the Order and these comprise the following:
- Requirement 1 (Interpretation) provides for the interpretation of words and phrases used in this part of the schedule. To prevent unreasonable delays to

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<sup>45</sup> S.I 2013/586

the authorised development, a flexible definition of “stage” has also been included.

- Requirement 2 (Time limits) provides that the authorised development must commence within 5 years of the date of the order.
- Requirement 3 (Compliance with approved details) provides that the authorised development shall be carried out in accordance with the design drawings within the limits of deviation so as to allow the necessary but proportionate degree of flexibility in the construction of the important and nationally significant infrastructure project.
- Requirement 4 (Stages of authorised development) provides that no development must commence until the relevant planning authority have authorised, in consultation with the relevant highway authority, written details of the stages of the development. Paragraph (2) provides that at the commencement and completion of each stage of development, and when operational use of that part occurs, written notice shall be given to the relevant planning authority and the relevant highway authority within 10 days of the relevant event.
- Requirement 5 (Restrictions on limits of deviation) provides that (with the exception of poles 155 and 203) no pole shall move more than 5m from its location shown on the works plans. It further provides that the line will not move outside the limits of deviation. Paragraph (3) provides that there shall be no deviation of poles 126, 127, 128, 154 and 155 from their positions or access to those poles without prior written consent of the relevant planning authority. Paragraph (4) provides that pole 76 shall not be deviated closer to Bryn Meusydd than shown on works plan A/WP/PS/7. Paragraph (5) is to allow for the micrositing of Pole 155 to the location identified within Option 4 of [REP7-017] provided this deviation is agreed in writing with the landowner (approval would also be sought from the relevant planning authority under Paragraph (3) due to pingos in the area).

- Requirement 6 (Restrictions on limits of deviation near hedgerows and watercourses) provides specific restrictions on the siting of poles near hedgerows and watercourses.
- Requirement 7 (Protection of private water supplies) provides that the underground sections of poles 170, 171 and 172 shall be placed within a concrete sleeve. The purpose of this Requirement is to protect adjacent water supplies.
- Requirement 8 (HDD drill depths and construction periods) provides a minimum depth of horizontal directional drilling (“HDD”) under river beds and watercourses and restricts any HDD under the bed of the River Towy so that it cannot take place between 1 April and 30 June in any calendar year.
- Requirement 9 (Highway accesses) provides that no stage of the authorised development must commence until written details of the design, layout and subsequent removal of any new temporary or permanent means of access to the highway have been approved by the relevant bodies.
- Requirement 10 (Public rights of way) provides that no authorised development stage must commence until a written plan and specification for the temporary diversion of a right of way has been approved by the relevant bodies.
- Requirement 11 (Fencing and other means of enclosure) provides that no stage of the authorised development must commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure have been approved by the relevant bodies.
- Requirement 12 (Contaminated land and groundwater) is concerned with the process for dealing with contamination should it be found at any time when carrying out the approved development.
- Requirement 13 (Archaeology) provides that no stage of the authorised development shall be commenced until a written scheme of investigation of

any areas of archaeological interest discovered whilst carrying out the authorised development has been approved by the local authority.

- Requirement 14 (Plans) provides that the authorised development shall be carried out in accordance with the approved plans submitted with the Application but subject to the power to deviate and any of the other Requirements.
- Requirement 15 (Habitat management plan) provides that no stage of works in areas identified in the submitted habitat management plan shall commence until a final habitat management plan has been submitted to and approved by the relevant planning authority. The requirement further provides that the authorised development will be implemented, maintained and monitored in accordance with the final habitat management plan. The plan will be reviewed for a period of up to 5 years by the undertaker, in consultation with the relevant planning authority and no recommendations or modifications can be implemented without their written agreement.
- Requirement 16 (Trees to be affected) provides that a protocol will be prepared, submitted and approved by the relevant planning authority for the identification of trees to be affected by the authorised development.
- Requirement 17 (Lighting) provides that where lighting is required to illuminate working areas this shall be directional and shall not spill onto watercourses, riparian corridors, residential properties or gardens.
- Requirement 18 (Construction traffic management plan) provides that the authorised development shall be implemented in accordance with the final construction traffic management plan.
- Requirement 19 (Temporary bridge) provides that prior to installing a temporary bridge; details shall be submitted to and approved by the relevant planning authority. The bridge must also be removed and the land reinstated to the satisfaction of the relevant authority within 1 month of completion of the undergrounding works.

- Requirement 20 (Construction hours) provides the hours within which construction work is allowed to take place.
- Requirement 21 (Construction environmental management plan) provides that the authorised development shall be implemented in accordance with the final construction environmental management plan.
- Requirement 22 (Restoration of land used temporarily for construction) provides that any land within the Order limits which is used temporarily for construction is to be reinstated to its former condition, or such condition as the relevant planning authority may approve, within 6 months of completion of the construction of the authorised development, or such further time as may be approved in writing by the relevant planning authority.
- Requirement 23 (Requirement for written approval) provides that where under any of the above Requirements the approval or agreement of the relevant planning authority or other person is required, the submission of the matter and the approval or agreement must both be given in writing.
- Requirement 24 (Frac-out contingency plan) provides that prior to the commencement of the undergrounding works in Work No 2, a frac-out contingency plan shall be submitted to and approved by the relevant planning authority. The final frac-out contingency plan shall then be implemented should frac-out occur.
- Requirement 25 (Decommissioning) provides that should the connection become redundant (as determined by the undertaker) for operational purposes the undertaker shall submit a decommissioning and restoration plan for approval. Decommissioning shall be completed within 24 months following the decommissioning and restoration plan approval.
- Requirement 26 (Flooding) provides that prior to commencement of development areas identified as being at risk of flooding in the flood consequence assessment a flood risk management strategy and a flood evacuation plan shall be submitted to the relevant planning authority in



consultation with Natural Resources Wales.

- Requirement 27 (Foundation Depths) provides that the overhead line poles shall not exceed 2.7m measured from natural ground level.
- Requirement 28 (Hedgerows) provides that the width of individual hedgerows to be removed shall be restricted to a maximum width of 8m within Work No.2 and 6m within Work No.1 and Work No.3. The hedgerow within work No.2 shall be translocated and reinstated.
- Requirement 29 (Otter Surveys) provides that prior to the commencement of development within the Nant Morlais Woodland (Work No. 1) and Work No.2 that pre-construction otter surveys shall be undertaken and the result submitted to the relevant planning authority in consultation with Natural Resources Wales. Development shall not commence with the Nant Morlais Woodland (Work No.1) and Work No.2 until either the absence of otters is confirmed or the mitigation proposed is agreed by the relevant planning authority in consultation with Natural Resources Wales and implemented.11.7 The draft requirements set out in Schedule 3 may be subject to amendment following on-going discussions with relevant planning authorities, statutory and other consultees.

**Schedule 4 (Modification of compensation and compulsory purchase enactments for creation of new rights)**

- 11.8 Pursuant to Articles 19 and 20, this sets out the modifications to the statutory provisions applicable to compensation and compulsory purchase under the Order where new rights are to be acquired.

**Schedule 5 (Parts of access to be maintained at the public expense)**

- 11.9 This sets out those parts of accesses that are to be maintained at the public expense pursuant to Article 11.

**Schedule 6 (Streets subject to street works)**

- 11.10 This sets out the streets referred to in Article 10 that will be subject to street works. The schedule is split into two parts. Part 1 refers to crossing points and Part 2 refers to accesses.

**Schedule 7 (Streets or public rights of way to be temporarily closed)**

- 11.11 This sets out the streets and public rights of way which are subject to temporary closure powers under Article 12.

**Schedule 8 (Land of which temporary possession may be taken)**

- 11.12 This sets out the land referred to in Article 28 which WPD may temporarily occupy and the purpose for which that temporary occupation may be taken.

**Schedule 9 (Protective provisions)**

- 11.13 This sets out the provisions for the protection of statutory undertakers affected by the authorised development. Part 1 provides protection for the oil undertakers. Part 2 provides protection for National Grid Gas Plc and National Grid Electricity Transmission Plc. Part 3 comprises protection for Dwr Cymru Cyfyngedig. Part 4 provides protection for Wales and West Utilities Limited and Part 5 covers protection for operators of electronic communications code networks.
- 11.14 The protective provisions are based on similar protective provisions found in The National Grid (King's Lynn B Power Station Connection) Order 2013, The National Grid (North London Reinforcement Project) Order 2014 and The National Grid (Hinkley Point C Connection Project) Draft Development Consent Order 2015.

**Schedule 10 (Discharge of requirements)**

- 11.15 This applies to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Schedule 3 or under any other provision of the Order. It clarifies the procedure which applies in respect of these additional consents.

**Schedule 11 (Removal of important hedgerows)**

- 11.16 This sets 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. The inclusion of this schedule is based on the guidance of PINS in Advice Note 15.
- 11.17 The articles and schedules within the Order are draft provisions and subject to further change.

## Appendix 1

### Welsh Government Advice Note

Advice note from Osborne Clarke dated March 2015



## The Western Power Distribution (Brechfa Forest Connection) Development Consent Order

### Note for Welsh Government on powers under the Planning Act 2008 relating to the underground section of the proposed development.

1. The Planning Inspectorate (PINs) has produced Advice Note Fifteen: Drafting Development Consent Orders (Version 1 October 2014). The advice note has no statutory status but reflects the views of the Government Departments most involved in the Planning Act 2008 (PA 2008) regime.
2. Paragraph 4 of the advice note relating to authorised development in Wales states:

*4.1 If an applicant is seeking development consent for an NSIP in Wales sufficient explanation should be provided in the explanatory memorandum for why the applicant considers that all the elements in the application can be included, this is particularly important given the limited scope of associated development for NSIP's in Wales.*

*4.2 Applicants are advised to engage sufficiently early during the pre-application stage with the Welsh Government in relation to the scope of what is proposed to be included in the application."*
3. The draft Order seeks consent for three work phases as the authorised development. Work No.1 and Work No. 3 comprise of sections of above ground 132kV electricity lines. Work No. 2 comprises of an underground section of 132kV electricity line. Following meetings with Welsh Government (03 March 2015) and PINs (04 March 2015) to discuss the draft Order Western Power Distribution (WPD) was asked to provide this note to explain why it considers that the underground section can be included in the Order. Section 14(1)(b) PA 2008 provides that a nationally significant infrastructure project (NSIP) means a project consisting of the installation of an electric line above ground (subject to certain thresholds).
4. The request comes because the PA 2008, to the extent that it applies in Wales, limits what can be permitted as development associated with an NSIP. Section 115 PA 2008 provides that consent can be granted for development for which development consent is required or associated development. Section 115(4) limits associated development in Wales to the carrying out of construction of surface works boreholes or pipes and is associated with development in subsection 17(3) (underground gas storage). Other development that is considered to be associated development cannot be granted consent under the PA 2008 for an above ground electricity project in Wales.
5. DCLG have produced guidance "Guidance on associated development applications for major infrastructure projects – April 2013" which is intended to guide applicants as to how the PA 2008 relates to associated development. Paragraph 3 references the PA 2008 and states that, "associated development is defined as development which is associated with the principal development." It further notes the restriction as it applies in Wales and states that



the Guidance will be of limited relevance in Wales. Section 5 is however useful to refer to in full as follows, noting that it is drafted in inclusive terms for projects in England:

*\*Associated development principles*

5. It is for the Secretary of State to decide on a case by case basis whether or not development should be treated as associated development. In making this decision the Secretary of State will take into account the following core principles:

(i) The definition of associated development, as set out in paragraph 3 above, requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts.

(ii) Associated development should not be an aim in itself but should be subordinate to the principal development.

(iii) Development should not be treated as associated development if it is only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of the principal development. This does not mean that the applicant cannot cross-subsidise, but if part of a proposal is only necessary as a means of cross-subsidising the principal development then that part should not be treated as associated development.

(iv) Associated development should be proportionate to the nature and scale of the principal development. However, this core principle should not be read as excluding associated infrastructure development (such as a network connection) that is on a larger scale than is necessary to serve the principal development if that associated infrastructure provides capacity that is likely to be required for another proposed major infrastructure project. When deciding whether it is appropriate for infrastructure which is on a larger scale than is necessary to serve a project to be treated as associated development, each application will have to be assessed on its own merits. For example, the Secretary of State will have regard to all relevant matters including whether a future application is proposed to be made by the same or related developer as the current application, the degree of physical proximity of the proposed application to the current application, and the time period in which a future application is proposed to be submitted.\*

6. Annexes A and B of the guidance list examples of associated development and include electricity networks (as general associated development) and underground lines (related to onshore and offshore generating stations). Section 12 of the guidance is also useful to refer to in full (with our emphasis noted):

*\*Examples of associated development*

12. Annexes A and B provide examples of the type of development that may qualify as associated development. These annexes are illustrative only. In particular the following should be noted:

- These annexes are not intended to be exhaustive. For example, technological progress may mean that some types of associated development could not have been foreseen when this guidance was written.



- *These annexes should not be read as a statement that the development listed in them should be treated as associated development as matter of course; these lists should be read together with the core principles.*
  - *These annexes should not be treated as an indication that the development listed in them cannot in its own right constitute a project, or an **integral part of a project**, for which obtaining development consent is mandatory under the Planning Act."*
7. The Brechfa Forest Connection (BFC) project was initially proposed to be constructed as an overhead connection in full. WPD conducted an extensive technical and environmental appraisal process including consideration of the alternative option of undergrounding sections of the line. Details are outlined in Appendix 1.1. of the Brechfa Forest Connection Route Alignment Selection Report August 2014<sup>1</sup>. This examination was driven by the criteria set out in the National Policy Statement for Electricity Networks Infrastructure ("NPS EN5") (paragraph 2.8.8) which is again, useful to note in full:
- "Undergrounding*
- 2.8.8 Paragraph 3.7.10 of EN-1 sets out the need for new electricity lines of 132kV and above, including overhead lines. Although Government expects that fulfilling this need through the development of overhead lines will often be appropriate, it recognises that there will be cases where this is not so. Where there are serious concerns about the potential adverse landscape and visual effects of a proposed overhead line, the [IPC] will have to balance these against other relevant factors, including the need for the proposed infrastructure, the availability and cost of alternative sites and routes and methods of installation (including undergrounding)."*
8. The "serious concern" test was adopted whereby consideration was given to the landscape and visual impacts of overhead lines, having specific regard to the statutory and non-statutory environmental designations. It was concluded that in the present case a complete overhead connection could result in an unacceptably high level of impact even with feasible mitigation and hence would be unlikely to receive consent. The specific sections identified as posing "serious concern" were further evaluated alongside environmental, technical and cost considerations, leading WPD to decide to underground the connection where it crosses the River Towy Valley. This section now forms Work No. 2.
9. The underground section forms part of the project mitigation. As a direct replacement of the overhead sections, it does not consist of development associated with the project; it forms an integral part of the scheme. Section 31 PA 2008 provides that consent is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.
10. The sub note to paragraph 2.8.8 states *"Proposed underground cables do not require development consent under the Planning Act, but they may form part of a scheme of new infrastructure which is the subject of an application under the Act, and requirements or obligations regarding undergrounding may feature as a means of mitigating some of the adverse impacts of a proposal which does require and is granted development consent."*

<sup>1</sup> <http://www.westernpower.co.uk/docs/About-us/Our-business/Our-network/Current-WPD-Planning/Library/September-2014/Route-Alignment-Selection-Report-Appendix-1-1.aspx>



11. The Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418) grants planning permission for underground cables - Class G Part 17 of Schedule 2. However these rights do not apply where development permitted is EIA development, which the Brechfa Forest Connection project is.
12. Government advice states<sup>2</sup> that for the purposes EIA a particular planning application should not be considered in isolation if, in reality, it is properly to be regarded as an integral part of an inevitably more substantial development. The project will be considered as a whole for the purposes of environmental assessment. As the underground line forms part of the mitigation of what is an EIA development it cannot proceed on its own as permitted development or, in our view, as integral mitigation to the project, as a separate development.
13. The Order further seeks, and requires that rights over land are acquired compulsorily to construct the underground line. Sections 120(3) & 120(4) of PA 2008 provide that an Order may make provision relating to, or to matters ancillary to, the development for which consent is granted and in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5. Part 1 of Schedule 5 includes the acquisition of land compulsorily or by agreement.
14. WPD have also sought the advice of Russell Harris QC on this point whose advice can be summarised as follows:  
  
*"The Planning Act 2008 allows for works integral to an overhead lines project to form part of the DCO, in Counsel's opinion undergrounding is an integral part of an overhead lines project"*
15. In conclusion, WPD's legal advice is that the underground section of the project can consist of development integral to the overhead line and the development for which consent is sought and for which consent may be permitted pursuant to the PA 2008 regime. In order for the Examining Authority to be able to properly assess the BFC project as an NSIP, the underground cable section must be considered as integral to the scheme as a whole.
16. The position can be summarised thus:
  - The BFC project was initially proposed to be constructed as an overhead connection in full.
  - An extensive technical and environmental appraisal was undertaken including consideration of the alternative option of undergrounding sections of the line.
  - The evaluation of serious concern resulted in a decision to underground the Towy Valley crossing to mitigate for unacceptably high adverse environmental impact.
  - The underground section forms part of the project mitigation.
  - As a direct replacement of the overhead sections, the undergrounding does not consist of development associated with the project; it forms an integral part of the scheme.

<sup>2</sup> Circular 02/99: Environmental Impact Assessment (note superseded by National Planning Practice Guidance for England only) – see paragraph 46





- The underground section of the project can consist of development integral to the overhead line.

**Osborne Clarke**  
**March 2015**

## Appendix 2

### Welsh Government Email Correspondence

Email from Debbie Waddington (on behalf of the Welsh Government) dated 12 May 2015

**From:** Waddington, Debbie (EST - Energy Wales Unit) [<mailto:Debbie.Waddington@Wales.GSI.Gov.UK>] **On**  
**Behalf Of** Government Business E&E  
**Sent:** 12 May 2015 15:42  
**To:** Neil Bromwich  
**Cc:** Boddington, Wendy (EST - Energy Wales Unit); Government Business E&E; Fudge, Jonathan (NR - Planning Directorate); Davies, Teresa (NR - Planning Directorate); Buchan, Chris (EST - Energy Wales Unit); 'ahubbold@westernpower.co.uk'; 'david.kenyon@amecfw.com'; 'Kathryn.Powell@pins.gsi.gov.uk'  
**Subject:** Welsh Government Response - Western Power Distribution - Brechfa Forest Connection DCO [OC-OC\_UK.FID2191645]

Dear Neil

Thank you for your email of 5 May.

I am writing on behalf of Welsh Government in respect of your pre-application in respect of the construction of a new 132kV line connection for the Brechfa Forest Connection Project.

As a general comment, the proposed development should be in accordance with the policies set out within the Welsh Government's Planning Policy Wales with particular reference to Technical Advice Note (TAN) 8: Planning for Renewable Energy :-  
<http://wales.gov.uk/topics/planning/policy/tans/tan8/?lang=en>

You will be aware of the Welsh Government's preferred option for undergrounding of cables wherever possible, and we welcome the fact that some of the proposed route is undergrounded. In light of the view provided by Osborne Clarke, we would make the following comments regarding the underground element of the project.

The Welsh Government's interpretation is that for an element to be considered to "form part of" a NSIP [Section 31 PA 2008] it must be necessary to enable the construction, operation, or maintenance of the Nationally Significant Infrastructure Project. This is the installation of an 132kV electricity line between two identified points in this case. For electricity to flow from point A to point B (the purpose of the project) the cable needs to be continuous, and therefore it may be reasonable to conclude that the underground element is necessary to ensure that the NSIP can operate as intended. Consequently it may also be reasonable to conclude that this element could also be included within an application for development consent, and any subsequent DCO.

The Welsh Government reserves the right to raise other items of concern during the application phase. I must stress that the interpretation above is only a view, and ultimately a Court could disagree with this view. Therefore neither the developer nor any decision maker should rely on this view, and must seek their own legal advice.

Thanks  
Debbie

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Strategy Executive - Gweithredydd Strategaeth

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