

SP MANWEB

Reinforcement to the North Shropshire Electricity Distribution Network



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SP MANWEB

**The Reinforcement to the North Shropshire
Electricity Distribution Network Order 201[]**

Explanatory Memorandum

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

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The Planning Act 2008**The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009****Regulation 5(2)(c)****Reinforcement to the North Shropshire****Electricity Distribution Network****Explanatory Memorandum**

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1. SUMMARY

- 1.1 This explanatory memorandum supports the application by SP Manweb PLC ("**SP Manweb**") under the Planning Act 2008 (the "**Act**") for the Reinforcement to the North Shropshire Electricity Distribution Network Order (the "**Order**"). The Order would grant powers to construct and install, operate and maintain an approximately 1.2 kilometre 132kV underground cable and an approximately 21.3 kilometre 132kV overhead electricity distribution connection (electric line) from Oswestry substation to Wem substation, both in Shropshire, as well as works to both substations and the diversion of some lower voltage lines.
- 1.2 The whole project is known as the North Shropshire Reinforcement Project. The Proposed Development will provide the capacity necessary for the electricity distribution network in the area to transport increased power flows and meet predicted energy demand levels.
- 1.3 This explanatory memorandum explains the purpose and effect of each article of, and Schedules to, the draft Order, as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹. The term "DCO" has been used in other application documentation, it has the same meaning as the "Order", which has been adopted in this document to be consistent with the draft Order.
- 1.4 Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, the General Model Provisions² (the "**model provisions**") provide a useful starting point and this Order has been based upon the model provisions unless otherwise stated. Where there is a departure from the model provisions or an article is based on other precedent orders, an explanation of the new provision is provided. In general, precedents used for the purposes of the Order follow development consent orders for electric lines, such as the North Wales

¹ S.I. 2009/2264.

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

Wind Farm Connection Order 2016³ and the Brechfa Forest Wind Farm Connection Order 2016⁴ and the National Grid (Richborough Connection Project) Development Consent Order⁵. Regard has also been had to the most recent orders notably the M20 Junction 10a Development Consent Order 2017⁶, the Silvertown Tunnel Order 2018⁷ and the Eggborough Gas Fired Generating Station Order 2018⁸.

- 1.5 The draft Order does not include those model provisions which are not relevant, or applicable, and this explanatory memorandum does not provide a further explanation for their omission.

2. PURPOSE OF THE ORDER

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

- 2.2 The Order would authorise the development described in Schedule 1 (Authorised Development) of the Order. In summary, the authorised development (i.e. the Proposed Development) includes (but is not limited to):

- 2.2.1 Work No.1: works within the boundary of the existing SP Manweb Grid Substation at Oswestry as shown on sheet 1 of the works plans including installation of electrical switchgear and associated equipment (including 132kV cable sealing ends, isolator and associated busbar and 132kV outdoor circuit breaker) and 132kV underground cable;

³ S.I. 2016/818.

⁴ S.I. 2016/0000.

⁵ S.I. 2017/817.

⁶ S.I. 2017/1202.

⁷ S.I. 2018/574.

⁸ S.I. 2018/1020

- 2.2.2 Work No.2: approximately 1.2km of underground 132kV cable and fibre optic cable from Oswestry Substation connecting to a terminal structure at Long Wood (SJ 3113229877) shown on sheet 1 of the works plans;
- 2.2.3 Work No.3: approximately 21.3km of 132kV overhead electricity Trident wood pole line from the terminal structure at Long Wood and terminating at a gantry at SP Manweb's existing Wem Substation shown on sheets 1-16 of the works plans;
- 2.2.4 Work No.4A: the removal of existing 11kV and 33kV overhead lines between Oswestry and Wem as shown on sheets 2, 3, 7, 8, 12, 13, 14 and 16 of the works plans including the removal of all associated wood poles, conductors, insulators and fittings;
- 2.2.5 Work No.4B: the undergrounding of 11kV and 33kV cables between Oswestry and Wem as shown on sheets 1, 2, 3, 7, 8, 9, 12, 13, 14 and 16 of the works plans;
- 2.2.6 Work No.5: works within the existing Wem Substation shown on sheet 16 of the works plans comprising the installation of a 132kV gantry, isolator, associated busbar, a 132kV to 33kV transformer, 33kV cable and a 33kV circuit breaker.
- 2.3 In connection with the installation of the electric line above and below ground, the Order specifically authorises "associated development", being development that is associated with NSIP or any part of it. The Secretary of State may, under the provisions of section 115 of the Act, grant consent for development that is associated with the NSIP.
- 2.4 Guidance on associated development has been issued by the Secretary of State⁹. This Guidance explains that the Secretary of State will decide on a case by case basis whether or not development should be treated as associated development and the core principles that will be taken into account. These

⁹ Planning Act 2008: Guidance on associated development applications for major infrastructure projects (Department for Communities and Local Government) (April 2013)

principles include the following (summarising paragraphs 5 and 6 of the Guidance):

A direct relationship should exist between the 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.

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

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. Cross subsidy is permissible but if part of the proposal is only necessary as a means of cross-subsidising the principal development then that part should not be treated as associated development.

Associated development should be proportionate to the nature and scale of the principal development. This does not exclude associated development (such as a network connection) which is on a larger scale than is necessary to serve the principal development if it 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 has to be assessed on its merits. The Secretary of State would 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, 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.

It is expected that associated development will, in most cases, be typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project.

2.5 The description of the Authorised Development in Schedule 1 of the Order includes associated development that supports the construction and operation of the principal development and is subordinate to that development, in accordance with the core principles set out in the CLG guidance and includes (but is not limited to) matters such as:

2.5.1 the establishment of temporary laydown and storage areas;

2.5.2 establishment of temporary means of access and access tracks;

2.5.3 reinstatement hedgerow planting;

2.5.4 installation of a welfare unit and security cabin;

2.5.5 diversion of lower voltage overhead lines;

2.5.6 drainage works and temporary culverts;

2.5.7 works to alter the position of apparatus, including mains, sewers, drains and cables;

2.5.8 works to alter the course of or otherwise interfere with a watercourse;

2.5.9 establishment of winching points and the erection of scaffolding.

2.6 In some cases there may be some overlap between associated development and the works which form part of the NSIP. SP Manweb considers that all elements of the Proposed Development either constitute part of an NSIP or are “associated development” within the meaning of section 115(2) of the Act and so can properly be authorised by the Order.

3. ANCILLARY POWERS

3.1 The Order also contains several powers that are ancillary to the authorised development.

- 3.2 The main ancillary matter is a power to acquire rights compulsorily, in accordance with section 120(4), 122 and Part 1 of Schedule 5 of the Act. These rights, including the imposition of restrictions, are required for the Proposed Development. SP Manweb are seeking the minimum powers necessary to construct, maintain and operate the authorised development. SP Manweb are not seeking powers to compulsorily acquire freehold ownership of land, only rights over it.
- 3.3 The Order seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. In such cases, sections 117 and 120(5) of the Act require that the Order be made by Statutory Instrument. The Order is drafted in that form.

4. DRAFT ORDER

The provisions of the Order are explained below.

4.1 Part 1 - Preliminary

Preamble

- 4.1.1 The Order, in common with all statutory instruments, is introduced by a preamble.
- 4.1.2 This preamble includes a reference to the Secretary of State being satisfied that, to the extent that it authorises the compulsory acquisition of a right over land to which section 132 of the Act applies (Commons, open spaces etc: compulsory acquisition of rights over land) the Order land, when burdened with an Order right, will be no less advantageous than it was before. As a result, the Order would not be subject to special parliamentary procedure.

Article 1 (Citation and commencement)

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

Article 2 (Interpretation)

4.1.4 Article 2(1) provides for the interpretation of the rest of the Order, including the Schedules. A short interpretation section is included at the start of Schedule 2 (Requirements) and within Schedule 6 (Protective Provisions) and at the end of Schedule 7 (Procedure for discharge of requirements) for terms that apply specifically to those Schedules only. The definitions used in the model provisions are amended and supplemented to reflect the particular circumstances of the authorised development and changes to the Act which have been made since it was originally enacted. A number of definitions are added including:

- (a) "construction report" which has been included to define this term which is used throughout the Order;
- (b) "environmental statement", which has been included to define this term which is used throughout the Order;
- (c) "limits of deviation" to explain the limits of deviation in which the authorised development can be undertaken;
- (d) "requirements" which means those requirements which are set out at Schedule 2;

4.1.5 Other additions include "access and rights of way plans", "apparatus", "date of final commissioning", "footpath", "footway", "highway", and "maintain".

4.1.6 The definition of "relevant planning authority" is a model provision definition but has been amended to refer to the specific local planning authority for the area to which the specific provision relates.

4.1.7 Article 2(2) expands the definition of rights over land, as included in the model provisions, to clarify references to the imposition of restrictions over the Order land.

4.1.8 Article 2(3) defines measurements as approximate, in line with the model provisions.

4.1.9 Articles 2(4) to (6) are not in the general model provisions. Article 2(4) provides that areas given in the book of reference (document reference 4.3) are approximate since the book of reference is outside the scope of Article 2(3). Articles 2(5) and 2(6) explain how references in the Order to numbered works, letters or numbered points are to be construed.

4.2 **Part 2 - Principal powers**

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

4.2.1 Article 3 gives the principal power to carry out the authorised development, as described in Schedule 1 to the Order, within the Order limits. The development consent is subject to the Requirements listed in Schedule 2 to the Order, which are described further below. The article is a modification of the model provisions.

4.2.2 There are no "ancillary works" for the authorised development within the meaning given in Article 1 of the model provisions, and so this term has been removed from Article 3 and Article 2 of the Order.

Article 4 (Limits of deviation)

4.2.3 The Article reflects a provision which is included in the railway model provisions and which is appropriate in the context of linear projects. These limits permit a deviation within the Order limits at paragraph (a) (subject to restrictions imposed by requirements 3 and 4) and a vertical deviation referred to in paragraph (b).

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

- 4.2.5 The Article allows construction and maintenance activities to be carried out anywhere within the Order limits.
- 4.2.6 Limits of deviation must be within the Order limits but micro-siting of pole structures are restricted by the imposition of requirement 4.
- 4.2.7 The vertical limits of deviation have been set to 2 metres upwards from the heights given in the pole schedule (Table 1 of requirement 3) and any amount necessary or convenient downwards. This provision has been included to provide a degree of flexibility in the construction of the authorised development. An element of flexibility in downwards deviation is required so that any construction can reflect ground conditions when the works are carried out.

Article 5 (Operation of authorised development)

- 4.2.8 This Article confirms that the undertaker may not only install the electric line but also, in accordance with section 141 of the Act, has authority to keep installed the electric line above ground and the electric cable below ground. This authority is provided in lieu of consent which would otherwise be required under section 37 of the Electricity Act 1989.
- 4.2.9 Paragraph 3 of the Article confirms that the undertaker may use the electric line and any other elements of the authorised development as part of the electricity distribution network in England and Wales.

Article 6 (Maintenance of authorised development)

- 4.2.10 This Article sets out the scope within which the undertaker may maintain the authorised development. Article 6(1) closely reflects the terms of the model provisions. Article 6(2) restricts maintenance to works carried out within the Order limits to provide defined parameters within which this power can be exercised.

Article 7 (Benefit of the Order)

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

Article 8 (Consent to transfer benefit of the Order)

4.2.12 This Article provides for exceptions to Article 7 and allows any or all of the benefit of the provisions of the Order and related statutory rights to be transferred to another person, with the consent of the Secretary of State, subject to exceptions. The Article is based on the model provisions, with the exception of paragraph 4.

4.2.13 Under Article 8(4), the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order but such consent is not required where: (a) the transferee or lessee is a statutory undertaker; or (b) the transferee or lessee is a person who holds a licence issued under section 6(1) of the Electricity Act 1989; or (c) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.

4.2.14 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar financial and regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims.

4.2.15 Paragraph 2 has been amended so that it refers to 'transfer, or grant' which is considered to be more accurate than 'agreement'.

4.3 **Part 3 - Streets**

Article 9 (Power to alter layout, etc. of streets)

4.3.1 This Article allows the undertaker to alter the layout of a street for the purposes of the authorised development. Article 9 requires the undertaker to obtain the consent of the relevant street authority (paragraph (3)).

4.3.2 Article 9 is not included in the general model provisions. The Article has precedent in other linear schemes authorised by the Planning Act 2008¹⁰ and, to the extent that it is necessary, it provides powers to enable the authorised development to be constructed without unnecessary delay.

Article 10 (Street Works)

4.3.3 Article 10 is a model provision intended to permit in certain streets (as specified in Schedule 3) the carrying out of street works for the purposes of the authorised development. It has been amended so that the purposes for which street works can be undertaken (paragraph (1)) are specific to the authorised development and reflect the street works powers available to the undertaker in Schedule 4 to the Electricity Act 1989.

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

¹⁰ Article 11, The National Grid (North London Reinforcement Project) Order 2014 (S.I. 2014/1052) and Article 9, The North Wales Wind Farms Connection Order 2016 (S.I. 2016/818)

Article 11 (Temporary prohibition or restriction of use of streets and public rights of way)

4.3.5 This Article is refined from the model provisions and provides for the temporary alteration, diversion and prohibition or restriction on use of streets or public rights of way for the purposes of carrying out the authorised development. As per the model provision, it applies generally. Where the general power is being exercised the undertaker must obtain the consent of the street authority.

4.3.6 Paragraph (2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in Article 11, to use such a street as a temporary working site.

4.3.7 The Article has been expanded from the model provisions so that it refers to public rights of way.

Article 12 (Traffic regulation)

4.3.8 This Article allows, with the consent of the traffic authority, the undertaker to regulate traffic on the roads to the extent that is necessary for the purposes of, or in connection with, the construction of the authorised development. The Article is not in the general model provisions but there is precedence for it in the North Wales Wind Farms Connection Order 2016. It is considered necessary to ensure that the authorised development can be constructed safely and without unnecessary delay.

Article 13 (Access to works)

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

Article 14 (Agreements with street authorities)

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

4.4 Part 4 - Supplemental Powers*Article 15 (Discharge of water)*

4.4.1 This Article is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference in the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016.

Article 16 (Authority to survey and investigate the land)

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

4.4.3 The minor drafting changes include:

- (a) in paragraph 1(b) and 1(d) “boreholes or excavations” has been added;
- (b) in paragraph 3(a), "before or after" has been added to show that the proof of authority does not have to precede entry onto the land;
- (c) in paragraph 3(b) "with them" is changed to "onto the land" and “boreholes or excavations” has been added;
- (d) in paragraph 4 “boreholes or excavations” has been added;
- (e) in paragraph 4(a) the word "relevant" has been inserted in front of "highway authority" for clarity;
- (f) a new paragraph 5(a) has been added whereby the undertaker must “make good any damage to the land where it has made a trial hole, boreholes or excavation”.

4.5 **Part 5 - Powers of Acquisition**

Article 17 (Compulsory acquisition of right: incorporation of the mineral code)

4.5.1 This article is identical to the general model provisions (taking the option of incorporating Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 rather than just Part 2; Part 3 providing 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.

Article 18 (Compulsory acquisition of rights)

4.5.2 This Article gives the undertaker power to create and acquire new rights and impose restrictions for the purposes of the authorised development. Paragraph (1) provides that SP Manweb may create and acquire new

rights and impose the restrictions described in the book of reference (document reference 4.3) with the extent of this power being exercised over the land shown on the land plans (document reference 2.2.0-2.2.16). Paragraph (2) provides that where the undertaker needs only to acquire rights over the land or impose a restriction, it shall not be obliged to acquire any greater interest in that land.

- 4.5.3 As mentioned, the Article provides for the creation and acquisition of rights, as well as the imposition of restrictions. This is considered necessary to ensure that it is not possible for anything to be done which would interfere with the authorised development. This approach has been adopted in orders made under the Transport and Works Act 1992 and is considered reasonable and appropriate in the context of the authorised development to restrict the use of land or airspace above or beneath the overhead electric line or underground cable.
- 4.5.4 Paragraph (3) and Schedule 4 impose modifications to the compulsory purchase and compensation provisions under the compulsory purchase code. They do not affect the entitlement to compensation. The relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights and imposition of restrictions and not to affect the amount of compensation to which landowners would be entitled. This approach has been used in other orders.
- 4.5.5 Paragraphs (4) and (5) allow the undertaker to transfer its power to create and acquire rights and to impose restrictions to a statutory undertaker where required for purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, subject to obtaining the consent of the Secretary of State. This part of the Article is intended to reduce delay by requiring statutory undertakers to exercise their own powers.

4.5.6 Paragraphs (2) and (4) of the general model provisions have been deleted as the extinguishment of private rights is provided for pursuant to Article 21 (Private Rights).

4.5.7 This Article also references Schedule 4, which modifies compensation and compulsory purchase enactments and which is dealt with in a later part of this Explanatory Memorandum.

Article 19 (Statutory authority to override easements and other rights)

4.5.8 Article 19 provides that, in carrying out or using the authorised development and doing anything else authorised by the Order, the undertaker may, by virtue of section 158 of the Act, interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that by virtue of section 152 of the Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

4.5.9 This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in the Rookery South (Resource Recovery Facility) Order 2011 (Article 18) and the North Wales Wind Farms Connection Order 2016 (Article 20).

Article 20 (Time limit for exercise of authority to acquire rights compulsorily)

4.5.10 This article gives SP Manweb five years to issue “notices to treat” or a “general vesting declaration” to acquire the rights in land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring land is undertaken should this Order be made. This accords with the general model provisions.

Article 21 (Private rights)

4.5.11 This Article is based on a model provision and has the effect of extinguishing or suspending private rights and restrictive covenants over land in which the undertaker creates and acquires a right or imposes a restriction, whether compulsorily or by agreement.

4.5.12 The suspension or extinguishment takes effect to the extent that the continuance of the rights would be inconsistent with an activity authorised by the Order. The suspension of the right/restriction would subsist only for the period in which there is an inconsistency between the private right/restriction being imposed and the existing right or restriction relating to the land. In relation to rights/restrictions affected by land used for construction purposes they will be suspended for the construction period only, whereas rights which are affected by the operation of the 132kV underground cable and overhead line will be suspended for the lifetime of the 132kV underground cable and overhead line. The drafting departs from the model provision in that it relates to all rights/restrictions over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation or use of the authorised development. The Article generally follows the approach in the Rookery South (Resource Recovery Facility) Order 2011 (Article 17) and the M1 Junction 10a (Grade Separation) Order 2013 (Article 21) and the North Wales Wind Farms Connection Order 2016 (Article 23).

4.5.13 Paragraph (2) provides that where any existing private rights or restrictive covenants would interfere with any activities authorised by the Order on land which the undertaker has taken temporary possession, then the suspension will take effect from when the undertaker takes lawful possession and will remain in place for as long as the undertaker

remains in possession and the rights and/or restrictions are inconsistent with the exercise of the temporary possession of that land.

4.5.14 Paragraph (3) provides that there is an entitlement to compensation where loss is suffered as a result of the extinguishment or suspension of any private right or restrictive covenant.

Article 22 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)

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

4.5.16 This Article reflects a number of the amendments made to the Compulsory Purchase (Vesting Declarations) Act 1981 by virtue of the Housing and Planning Act 2016.

Article 23 (Acquisition of subsoil or airspace only)

4.5.17 This Article allows the undertaker to acquire rights below the ground or above it. The Article is similar to the model provision except that it has been extended to include airspace as well as subsoil and to relate to rights and restrictions. This is so that the rights required for the authorised development can be acquired with as little impact as possible on the remaining interest of the affected landowners. The acquisition of interests in, or rights over, airspace is particularly relevant in the context of overhead electric lines and is preceded - Article 28 of the National Grid (North London Reinforcement Project) Order 2014 and Article 26 of

the National Grid (Richborough Connection Project) Development Consent Order 2017.

Article 24 (Modification of Part 1 of the Compulsory Purchase Act 1965)

4.5.18 This Article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the Planning Act 2008. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 26 (Temporary use of land for carrying out the authorised development) and 27 (Temporary use of land for maintaining the authorised development) of this Order. These modifications have broad precedent including in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017.

Article 25 (Rights under or over streets)

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

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

4.5.20 This Article allows the land specified in Schedule 5 to be used temporarily for the purposes specified where required for the carrying out of the authorised development. The Article is in part a general model provision.

- 4.5.21 A modification to the model provision has been made to allow SP Manweb also to take temporary possession of any land within the Order limits but in respect of which no notice of entry has been served or a general vesting direction has been made.
- 4.5.22 The Article therefore means that SP Manweb can occupy the Order land to carry out certain activities (see sub-paragraphs (1)(b) to (1)(e)) without having to acquire a right in that land. This provides flexibility to the undertaker and also enables the undertaker to minimise the land in which rights are to be compulsory created and acquired or restrictions imposed, thereby enabling the undertaker to match the area of land required for the rights and restrictions with the final footprint of the authorised development.
- 4.5.23 The amendment to the general model provision is, therefore, considered proportionate.
- 4.5.24 There are clear limits on the length of time that the undertaker can use land in this way. The undertaker must vacate the land within one year of the date of final commissioning of the authorised development (defined in Article 2), unless a notice to treat has been served or general vesting declaration made. There are provisions around giving 14 days' notice and restoration of the land following the temporary possession/works. There are exceptions to the requirement to restore the land which are not included in the model provisions. This would apply, for example, where mitigation is provided but SP Manweb does not need to retain a permanent interest in the land or to replace an electric line which SP Manweb has removed in order to construct and install the Proposed Development.
- 4.5.25 This is a modified model provision and provides for the payment of compensation for that temporary use of the land.

4.5.26 Paragraph 12 disapplies provisions of the Neighbourhood Planning Act 2017 both to this Article and Article 27 (Temporary use of land for maintaining the authorised development). This disapplication would provide that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. The rationale for this is that the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and the regulations required to provide more detail on the operation of the regime have not yet been made. As such it is considered appropriate to apply the “tried and tested” temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date.

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

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

Article 28 (Special category land)

4.5.28 This Article (and the preamble to the Order) provides, in accordance with section 132(2) and section 132(3) of the Planning Act 2008, for the special category land required for the purposes of the Order to be discharged from all rights, trusts and incidents to which it was previously

subject, where their continuance would be inconsistent with the exercise of Order rights provided that the Secretary of State is satisfied that any special category land when burdened with Order rights will be no less advantageous to any affected persons before the imposition of the order rights on the special category land.

4.5.29 This position is recorded in the preamble to the Order (further to the requirements of section 132(2)(b) of the Planning Act 2008).

Article 29 (Statutory undertakers)

4.5.30 This article provides a power for the undertaker to extinguish or suspend the rights of, and remove or reposition the apparatus of, statutory undertakers shown on the land plans and described in the book of reference. It also provides a power to create and acquire new rights or impose restrictions over land belonging to statutory undertakers shown on the land plans and described in the book of reference. The model provision has been amended so as to allow for the suspension of rights of a statutory undertaker (for example where land is being used temporarily under the order) rather than just extinguishment and the ability to impose restrictions over land belonging to a statutory undertaker. Further, the ability to acquire land compulsorily has been removed as this is not proposed in the context of the authorised development. In all cases the powers conferred by this article are subject to the protective provisions within Schedule 6 of the Order.

Article 30 (Recovery of costs of new connections)

4.5.31 This Article provides that persons who have to create a new connection following the exercise of powers under Article 29 may recover the costs of new connections from the undertaker. It is a model provision, with the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.

4.6 Part 6 - Operations

Article 31 (Felling or lopping of trees and removal of hedgerows)

- 4.6.1 This Article provides that the undertaker may fell or lop or cut back the roots of any tree or shrub within, or overhanging, land within the Order limits to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused. It is a modification of the model provision.
- 4.6.2 Paragraph 4 of the article provides that the undertaker may, for the purposes of the authorised development, remove any hedgerow, or important hedgerow specified in Schedule 8, which falls within the Order limits.
- 4.6.3 Paragraph 1 modifies the model provision so it is clear that the power extends to trees or shrubs that are within or encroach upon the Order limits. The model provision has also been modified by the deletion of "passengers" which is not relevant to the authorised development.
- 4.6.4 Section 120(5)(a) of the Act provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order. This Article modifies the Hedgerow Regulations 1997 for the purposes of carrying out the authorised development. The modification, which is based on the model provisions, means that there will be no additional requirement to obtain the consent of the local authority to remove relevant hedgerows, where this is necessary for carrying out the authorised development.

4.7 **Part 7 - Miscellaneous and General**

Article 32 (Application of landlord and tenant law)

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

Article 33 (Operational land for the purposes of the 1990 Act)

4.7.2 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. This Article is identical to the general model provisions article.

4.7.3 Certain provisions under planning legislation applicable to statutory undertakers extend only to their operational land. Detailed statutory provisions determine what constitutes operational land including land where there is in force a specific planning permission for its development and that development, if carried out, would involve or have involved its use for the purpose of carrying on of the statutory undertaker's undertaking (section 264(3) Town and Country Planning Act 1990). The term "planning permission" in section 264(3) does not include an Order granting development consent and so it is important to include the Order by way of this article 33.

Article 34 (Defence to proceedings in respect of statutory nuisance)

4.7.4 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 or use of the authorised development and is in accordance with controls imposed by the local authority under the Control of Pollution Act 1974 or cannot reasonably be avoided.

4.7.5 The Article is based upon the model provision.

Article 35 (Certification of plans etc.)

4.7.6 This Article is a model provision. It provides for the submission of documents specified in Schedule 9 to the Order (the book of reference, the land plans, the work plans, the access and rights of way plans, the plans of important hedgerows affected, the environmental statement, the construction environmental management plan (including the outline hedgerow management plan and outline construction traffic management plan) and the construction report) which are referred to in the Order to the Secretary of State in order that they may be certified as being true copies.

Article 36 (Service of notices)

4.7.7 This Article deals with the service of notices pursuant to the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006 and are generally adopted in other orders as they are considered necessary in order to provide clarity and certainty in terms of notice provisions.

Article 37 (Procedure in relation to certain approvals etc.)

4.7.8 Paragraph 1 of this Article contains additional provisions in respect of any approval, consent or agreement (excluding the requirements) which is required to be given under the Order. It provides that any such approval, consent or agreement by the relevant authority must be given in writing.

4.7.9 An authority (specified in paragraph 1 of this Article) that fails to respond to an application for consent within 42 days of the application being made is deemed to have given its consent. This provision in paragraph 2 is necessary to give full effect to the power to carry out the authorised development as is provided for under section 120(5) of the Act.

4.7.10 Paragraph 3 provides that the procedures set out in Schedule 7 (Procedure for discharge of requirements) apply to any consent, agreement or refusal which needs to be obtained under the requirements set out in Schedule 2.

Article 38 (Arbitration)

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

4.8 Schedules

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

4.8.2 The authorised development comprises:

OSWESTRY SUBSTATION

- (a) **Work No.1:** works within the boundary of the existing SP Manweb Grid Substation at Oswestry shown on sheet 1 of the works plans including installation of electrical switchgear and associated equipment (including 132kV cable sealing ends, isolator and associated busbar and 132kV outdoor circuit breaker) and 132kV underground cable;

132kV UNDERGROUND CABLE

- (b) **Work No.2:** approximately 1.2km of underground 132kV cable and fibre optic cable from Oswestry Substation connecting to a terminal structure at Long Wood (SJ 3113229877 shown on sheet 1 of the works plans);

132kV OVERHEAD LINE

- (c) **Work No.3:** approximately 21.3km of 132kV overhead electricity Trident wood pole line from the terminal structure at Long Wood and terminating at a gantry at SP Manweb's existing Wem Substation shown on sheets 1-16 of the works plans;

LOWER VOLTAGE DIVERSIONS

- (d) **Work No.4A:** the removal of existing 11kV and 33kV overhead lines between Oswestry and Wem as shown on sheets , 2, 3, 7, 8, 12, 13, 14 and 16 of the works plans including the removal of all associated conductors, insulators and fittings;
- (e) **Work No.4B:** the undergrounding of 11kV and 33kV cables between Oswestry and Wem as shown on sheets 1, 2, 3, 7, 8, 9, 12, 13, 14 and 16 of the works plans;

WEM SUBSTATION

- (f) **Work No.5:** works within the existing Wem Substation, shown on sheet 16 of the works plans, comprising the installation of a 132kV cable gantry, isolator, associated busbar, a 132kV to 33kV transformer, 33kV cable and a 33kV circuit breaker;

ASSOCIATED DEVELOPMENT

- (g) The description of the Proposed Development in Schedule 1 of the Order includes associated development that supports the construction and operation of the principal development and is subordinate to that development, in accordance with

the core principles set out in the CLG guidance and includes matters such as the establishment of temporary laydown and storage areas.

4.8.3 **Schedule 2 (Requirements)** sets out the requirements which apply to the carrying out of and operation of the authorised development under the Order.

- (a) Requirement 1 (Interpretation) provides for the interpretation of words and phrases used in this Schedule.
- (b) Requirement 2 (Time limits) is taken from the model provisions. It states that the authorised development must be commenced within 5 years of the date that the Order is made.
- (c) Requirement 3 (Compliance with approved details). This requirement secures the carrying out of the authorised development in accordance with the approved drawings, subject to the limits of deviation.
- (d) Requirement 4 (Restrictions on the limits of deviation). This requirement sets restrictions on the limits of deviation of pole structures such that they are permitted to move no more than 5 metres from their location as shown on the works plans but no pole structure can be located within 1 metre of the outside edge of any hedgerow.
- (e) Requirement 5 (Plans). This requirement sets out that the authorised development must be carried out in accordance with the plans or other documents certified in accordance with article 35 (certification of plans) subject to the limits of deviation.

- (f) Requirement 6 (Felling). The authorised development includes the felling of trees and this requirement ensures that this is undertaken in accordance with the relevant guidance.
- (g) Requirement 7 (Construction Hours) controls construction hours during which construction work may be carried out. The requirement departs from the model provisions by providing different construction hours during summer and winter months and specifies works that can be undertaken outside of the working hours.
- (h) Requirement 8 (Contaminated land and ground water). The requirement provides that should contamination be identified during the course of construction that an investigation and risk assessment must be undertaken and that risk assessment may identify the need for a detailed remediation strategy. If a detailed remediation strategy is required this will be prepared and submitted to the relevant planning authority and the authorised development will be carried out in accordance with that report. The requirement departs from the model provisions as the Environmental Statement does not identify that there are any significant risks of contaminated land or groundwater.
- (i) Requirement 9 (Construction Environmental Management Plan) requires the approval, by the relevant planning authority, of a construction environmental management plan which is in accordance with the draft construction environmental management plan (which includes an outline hedgerow management plan and an outline construction traffic management plan). The authorised development must be

carried out in accordance with the approved construction environmental management plan.

- (j) Requirement 13 (Approved plans and amendments to approved plans) provides that any reference to an approved plan which has been amended must be taken to include the amendment if they are subsequently approved by the relevant planning authority. No amendment should be approved if it would be likely to give rise to any new or materially different environmental effects from those assessed in the environmental statement.
- (k) The draft requirements set out in Schedule 2 may be subject to amendment following ongoing discussions with the relevant planning authority, statutory and other consultees.

4.8.4 **Schedule 3 (Streets subject to street works)** sets out the streets that would be subject to street works.

4.8.5 **Schedule 4 (Modification of compensation and compulsory purchase enactments for creation of new rights)** modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in DCOs (as made) and has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016 and to follow precedent in the form of the as made M20 Junction 10a Development consent Order 2017 and the Silvertown Tunnel Order 2018.

4.8.6 **Schedule 5 (Land of which temporary possession may be taken)** sets out the land temporary possession of which may be taken pursuant to Article 26. Temporary possession may be taken of other land in accordance with the terms of Article 26.

4.8.7 **Schedule 6 (Protective Provisions)** provides protective provisions for:

- (a) Part 1: the protection of operators of electronic communications code networks;
- (b) Part 2: protection of electricity, gas, water and sewerage undertakers;
- (c) Part 3: protection of railway interests;
- (d) Part 4: protection of Canal & River Trust Network;
- (e) Part 5: protection of National Grid as Electricity Undertaker; and
- (f) Part 6: protection of Highways England's Network.

4.8.8 All these protective provisions are in draft and not yet agreed with the relevant parties but are, and will be, the subject of discussions.

4.8.9 **Schedule 7 (Procedure for discharge of requirements)** provides a clear procedure for the discharge of any consent, agreement or approval pursuant to a requirement by the relevant planning authority. It sets out clear time limits for decisions to be made within and makes provision for appeals to be made in the event of a refusal or if the relevant authority requires further information to be provided in relation to that application.

4.8.10 The Schedule is virtually identical to the Schedule appended to PINS Advice Note 15 "Drafting Development Consent Orders" (version 2, July 2018) with the following exceptions:

- (a) the Schedule now applies solely in relation to the discharge of requirements;
- (b) references to "discharging authority" have been altered to "relevant planning authority";
- (c) a new paragraph 1(3) has been included to require that notices are given in writing and where they are a refusal notice, reasons must be given; and

- (d) a fee of £116 has been inserted in paragraph 3(1) which corresponds to the fee local planning authorities charge for the discharge of planning conditions in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017.

4.8.11 The Eggborough Gas Fired Generating Station Order 2018 was made on 30 September 2018 with a modified form of the discharge schedule set out in PINS Advice Note 15. It provides for greater flexibility in the discharge of consents (other than requirements) and enables a deemed discharge provision to be included for other consents. The Eggborough approach is considered appropriate for this Order and has been utilised in a modified form in Article 37 and Schedule 7.

4.8.12 **Schedule 8 (Removal of important hedgerows)** 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.

4.8.13 **Schedule 9 (Documents to be certified)** sets out those documents to be certified pursuant to Article 35.