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STATUTORY INSTRUMENTS

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**2016 No. 987**

**INFRASTRUCTURE PLANNING**

**The Brechfa Forest Wind Farm Connection Order 2016**

*Made* - - - - *6th October 2016*

*Coming into force* - - *28th October 2016*

An application under section 37 of the Planning Act 2008<sup>(1)</sup> (“the 2008 Act”) has been made to the Secretary of State for an order granting development consent.

The application was examined by the Examining Authority which has made a report to the Secretary of State under section 83(1)(b) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009<sup>(2)</sup> and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114 and 120 of the 2008 Act, makes the following Order:

**PART 1**

**Preliminary**

**Citation and commencement**

**1.** This order may be cited as the Brechfa Forest Wind Farm Connection Order 2016 and comes into force on 28th October 2016.

**Interpretation**

**2.—(1)** In this Order—

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(1) [2008 c. 29](#). The relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 ([c. 20](#)), and by sections 22-27 of the Growth and Infrastructure Act 2013 ([c. 27](#)).

(2) [S.I. 2009/2263](#), amended by [S.I. 2012/635](#) and [2012/787](#).

“the 1961 Act” means the Land Compensation Act 1961<sup>(3)</sup>;

“the 1965 Act” means the Compulsory Purchase Act 1965<sup>(4)</sup>;

“the 1980 Act” means the Highways Act 1980<sup>(5)</sup>;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(6)</sup>;

“the 1984 Act” means the Road Traffic Regulation Act 1984<sup>(7)</sup>;

“the 1989 Act” means the Electricity Act 1989<sup>(8)</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(9)</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(10)</sup>;

“the 2008 Act” means the Planning Act 2008;

“access and rights of way plans” means the plans listed in Part 3 of Schedule 2 (plans) and certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

“archaeological written scheme of investigation” means the archaeological written scheme of investigation certified as the archaeological written scheme investigation by the Secretary of State for the purposes of this Order;

“authorised development” means the development described in Schedule 1 (authorised development), and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971<sup>(11)</sup>;

“carriageway” has the same meaning as in the 1980 Act;

“CEMP” means the Construction Environmental Management Plan (Document 8.6A) together with the waste management plan, the pollution prevention and emergency response plan, water management plan, the dust management plan, invasive weeds management plan, certified as the CEMP by the Secretary of State for the purposes of this Order;

“CMS” means the Construction Management Strategy (Document 8.5) certified as the CMS by the Secretary of State for the purposes of this Order;

“crown land plans” means the plans listed in Part 4 of Schedule 2 (plans) and certified as the crown land plans by the Secretary of State for the purposes of this Order;

“CTMP” means the Construction Traffic Management Plan (Document 8.7) together with the Public Rights of Way Management Strategy (Document 8.7 Annex 1), certified as the CTMP by the Secretary of State for the purposes of this Order;

“design drawings” means the design drawings listed in Part 5 of Schedule 2 (plans) and certified as the design drawings by the Secretary of State for the purposes of this Order;

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(3) 1961 c. 33.  
(4) 1965 c. 56.  
(5) 1980 c. 66.  
(6) 1981 c. 66.  
(7) 1984 c.27  
(8) 1989 c.29  
(9) 1990 c. 8.  
(10) 1991 c. 22.  
(11) 1971 c. 80.

“dust management plan” means the dust management plan forming Document 8.6 Annex 5 of the CEMP and certified as the dust management plan by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network, or
- (b) by other means but while in electronic form;

“environmental features plans” means the plans listed in Part 6 of Schedule 2 (plans) and certified as the environmental features plans by the Secretary of State for the purposes of this Order;

“environmental statement” means the environmental statement certified as such by the Secretary of State for the purposes of this Order;

“flood consequence assessment” means the flood consequence assessment certified as the flood consequence assessment by the Secretary of State for the purposes of this Order

“frac-out contingency plan” means the frac-out contingency plan certified as the frac-out contingency plan by the Secretary of State for the purposes of this Order;

“habitat management plan” means the habitat management plan (Document 8.6.1) and certified as the habitat management plan by the Secretary of State for the purposes of this Order;

“heritage designation plans” means the plans listed in Part 7 of Schedule 2 (plans) and certified as the heritage designation plans by the Secretary of State for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“invasive weeds management plan” means the invasive weeds management plan forming Document 8.6 Annex 6 of the CEMP and certified as the invasive weeds management plan by the Secretary of State for the purposes of this Order;

“land plans” means the plans listed in Part 8 of Schedule 2 (plans) and certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation) and shown on the works plans;

“maintain” means to inspect, repair, adjust, alter, remove, reconstruct, replace, reconductor or relay the authorised development, but not so as to vary from the description of the authorised development in Schedule 1 and provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and any derivative of “maintain” is to be construed accordingly;

“master key plan” means the master key plan listed in Part 2 of Schedule 2 (plans) and certified as the master key plan by the Secretary of State for the purposes of this order;

“Natural Resources Wales” means the Natural Resources Body for Wales;

“operational use” occurs when that part of the authorised development first transmits electricity at 132kV;

“Order land” means the land shown on the land plans which is within the Order limits and described in the book of reference;

“the Order limits” means the limits shown on the land plans and on the works plans within which the authorised development may be carried out;

“overall location plan” means the plan listed in Part 1 of Schedule 2 (plans) and certified as the overall location plan by the Secretary of State for the purposes of this Order;

“owner” in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(12);

“pollution prevention and emergency response plan” means the pollution prevention and emergency response plan forming Document 8.6 Annex 2 of the CEMP and certified as the pollution prevention and emergency response plan by the Secretary of State for the purposes of this Order;

“public rights of way management strategy” means the public rights of way management strategy forming Document 8.7 Annex 1 of the CTMP and certified as the public rights of way management strategy by the Secretary of State for the purposes of this Order;

“relevant highway authority” means the highway authority for the highway that the provision relates, being either the South Wales Trunk Road Agency or Carmarthenshire County Council as appropriate;

“relevant planning authority” means the planning authority for the area of land that the provision relates to, being Carmarthenshire County Council;

“the Requirements” means the requirements in Schedule 3 (Requirements);

“statutory undertaker” (except in Part 1 of Schedule 9) means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“transport assessment” means the transport assessment certified as the transport assessment by the Secretary of State for the purposes of this Order;

“trees and hedges with the potential to be affected plans” means the plans listed in Part 9 of Schedule 2 (plans) and certified as the trees and hedges with the potential to be affected plans by the Secretary of State for the purposes of this Order;

“undertaker” means Western Power Distribution (South Wales) Plc (Company Number 2366985) whose registered office is at Avonbank Feeder Road Bristol BS2 0TB or any other person who has the benefit of this Order in accordance with article 6 (benefit of Order) or 7 (consent to transfer benefit of Order);

“waste management plan” means the waste management plan forming Document 8.6 Annex 1 of the CEMP and certified as the waste management plan by the Secretary of State for the purposes of this Order;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“water management plan” means the water management plan forming Document 8.6 Annex 3 of the CEMP and certified as the water management plan by the Secretary of State for the purposes of this Order; and

“works plans” means the plans listed in Part 10 of Schedule 2 (plans) and certified as the works plans by the Secretary of State for the purposes of this Order. References

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the restrictions over the land which are made pursuant to this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters, or numbers are to be construed as references to points so lettered or numbered on the access and rights of way plans.

## PART 2

### Principal powers

#### Development consent granted by the Order

3.—(1) Subject to the provisions of this Order, and to the Requirements in Schedule 3, the undertaker is granted development consent for the authorised development in Schedule 1 to be carried out within the Order limits.

(2) The undertaker may install, and keep installed, the above ground electric lines and the underground cables included in the authorised development.

(3) The undertaker may use the electric line and any other elements of the authorised development as part of the electricity distribution system in Wales.

(4) Subject to article 5 (limits of deviation), the authorised development must be constructed and installed in the lines and situations shown on the works plans and in accordance with the levels shown on the design drawings.

#### Maintenance of the authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

#### Limits of deviation

5. In carrying out or maintaining the authorised development for which it is granted development consent by article 3(1) (development consent granted by the Order), the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans within the limits of deviation relating to that work as described in Requirements 3(1) and 3(2) and carry out construction activities for the purposes of the authorised development anywhere within the Order limits; and
- (b) deviate vertically from the levels of the authorised development set out in Table 1 of Requirement 3:
  - (i) to any extent not exceeding 2 metres upwards; or
  - (ii) to any extent downwards as may be necessary or convenient.

#### Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order) and the remaining provisions of this article, the provisions of this Order are to have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply where the consent granted by this Order is expressed to be for the benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

### **Consent to transfer benefit of Order**

7.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (the “transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee, any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is to be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

## **PART 3**

### **Streets**

#### **Application of the New Roads and Street Works Act 1991**

8.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if they are of a description mentioned in paragraphs (f) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made, or code of practice issued or approved, under those provisions are to apply (with the necessary modifications) in relation to any closure, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 12 (temporary closure of streets and public rights of way) and the carrying out of street works under article 10 (street works) whether or not the works, closure, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are —

- (a) section 54 (advance notice of certain works), subject to paragraph (4);
- (b) section 55 (notice of starting date of works), subject to paragraph (4);
- (c) section 56 (directions as to timing of street works);
- (d) section 57 (notice of emergency works);
- (e) section 59 (general duty of street authority to co-ordinate works);
- (f) section 60 (general duty of undertakers to co-operate);
- (g) section 65 (safety measures);
- (h) section 67 (qualifications of supervisors and operatives);
- (i) section 68 (facilities to be afforded to street authority);
- (j) section 69 (works likely to affect other apparatus in the street);
- (k) section 70 (duty of undertaking to reinstate);
- (l) section 71 (materials, workmanship and standard of reinstatement);

- (m) section 72 (powers of street authority in relation to reinstatement);
- (n) section 73 (reinstatement affected by subsequent works);
- (o) section 75 (inspection fees);
- (p) section 76 (liability for cost of temporary traffic regulation);
- (q) section 77 (liability for cost of use of alternative route); and
- (r) all such other provisions as apply for the purposes of the provisions mentioned above.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) are to have effect as if references in section 57 of that Act to emergency works were a reference to a closure, alteration or diversion (as the case may be) required in a case of emergency.

### **Street works**

**9.—**(1) The undertaker may, for the purposes of the authorised development, enter upon so much of any of the streets specified in Schedule 6 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in or over the street;
- (d) maintain apparatus in or over the street or change its position;
- (e) place and keep during the construction and installation of the authorised development scaffolding above the street or on any verge to a street;
- (f) strengthen, improve, repair or reconstruct any street;
- (g) remove or use all earth and materials in or under any street; and
- (h) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d), (e), (f) and (g).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The powers conferred in paragraphs (1) and (2) are without prejudice to the powers of the undertaker under the 1989 Act.

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

### **Construction and maintenance of new or altered means of access**

**10.—**(1) Those parts of each means of access specified in Schedule 5 (parts of access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the relevant highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the relevant highway authority.

(2) Those parts of each means of access specified in Schedule 5 (parts of access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the relevant street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from the date on which the undertaker no longer requires use of the access for the construction of the authorised development and from the expiry of that period by and at the expense of the relevant street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or

the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), a court is, in particular, to have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

### **Temporary closure of streets and public rights of way**

**11.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter or divert any street or public right of way and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to paragraph (1), the undertaker may use any street or public right of way closed under the powers conferred by this article within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary closure, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, alter or divert the streets and public rights of way specified in column (2) of Schedule 7 (streets/ rights of way to be temporarily closed, altered or diverted) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column (4) of that Schedule.

(5) The undertaker must not temporarily close, alter or divert—

- (a) any street or public right of way specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld.

(6) If a street authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (5)(b) that street authority is to be deemed to have granted consent.



## **Traffic regulation**

**12.**—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to when the authorised development first becomes operational—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (b) authorise the use as a parking place of any road; and
- (c) make provision as to the direction or priority of vehicular traffic on any road either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers of article 12 in respect of prohibitions or restrictions relating to vehicular traffic only and paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention to do so to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of subparagraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 or paragraph (1) of this article—

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,
- (b) and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004<sup>(13)</sup> (road traffic contraventions subject to civil enforcement).

(4) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(5) If the traffic authority fails to notify the undertaker of its decision within 56 days of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

## **Access to works**

**13.**—(1) The undertaker may, for the purposes of carrying out, construction or maintenance of the authorised development and with the consent of the relevant planning authority, after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If the relevant planning authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision within 42 days of receiving an application, the planning authority is to be deemed to have granted approval.

## **Agreements with street authorities**

**14.**—(1) A street authority and the undertaker may enter into agreements with respect to—

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(13) 2004 c.18

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (b) any temporary closure, alteration or diversion of a street authorised by this Order; or
  - (c) the carrying out in the street of any of the works referred to in article 9 (street works) or article 13 (access to works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### Supplemental powers

#### Discharge of water

**15.**—(1) Provided that consent has been obtained from the relevant person pursuant to paragraph (3) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(14)</sup> (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and, such consent may be given subject to such terms and conditions as that person may reasonably impose, but is not to be unreasonably withheld.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval is not to be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12 (1) (b) of the Environmental Permitting (England and Wales) Regulations 2010<sup>(15)</sup>.

(8) If a person who receives an application for consent under paragraph (3) or approval under paragraph 4 (a) fails to notify the undertaker of a decision within 28 days of receiving an application that person is deemed to have granted consent or given approval, as the case may be.

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<sup>(14)</sup> 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99.

<sup>(15)</sup> S.I. 2010/675.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, an internal drainage board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(16)</sup> have the same meaning as in that act.

### **Defence to proceedings in respect of statutory nuisance**

**16.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(17)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order is to be made and no fine may be imposed under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974<sup>(18)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Authority to survey and investigate the land**

**17.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

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<sup>(16)</sup> 1991 c.57.

<sup>(17)</sup> 1990 c. 43.

<sup>(18)</sup> 1974 c. 40. Section 61(9) amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to this Act which are not relevant to this Order.

- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required before or after entering the land, produce written evidence of their authority to do so; and
  - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes are to be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority,
- but such consent is not to be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).
- (6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—
- (a) under paragraph (4)(a) in the case of a highway authority; or
  - (b) under paragraph (4)(b) in the case of a street authority,
- that authority is to be deemed to have granted consent.
- (7) Unless the undertaker has taken temporary possession of the land pursuant to article 28 (temporary use of land by the undertaker), the undertaker shall (unless required by the owners of the land not to do so) remove all vehicles and equipment from and restore the land to the reasonable satisfaction of the owners as soon as reasonably practicable after completion of the survey, monitoring or investigation (as the case may be).

## PART 5

### Powers of acquisition

#### Application and modification of legislative provisions

**18.** Subject to the modifications set out in Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction, as they apply to the compulsory purchase of land and interests in land.

#### Compulsory acquisition of rights in, under or over land

**19.—(1)** The undertaker may acquire compulsorily rights in, under or over so much of the Order land described in the book of reference, as is required for the construction, use and maintenance of the authorised development or is incidental to it or required to facilitate it.

(2) The acquisition of rights in, under or over the land in this article 19 shall include the compulsory acquisition of a right in, under or over land by creation of a new right.

(3) The undertaker may impose the restrictions, in, under or over the Order land described in the book of reference, as well as by acquiring the rights and the benefits of restrictions already in existence.

(4) This article is subject to article 27 (temporary use of land by the undertaker).

(5) Subject to section 8 of the 1965 Act (provisions as to divided land) as substituted by paragraph 5 of Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right in, under or over land under this article or imposes a restriction under paragraph (3) the undertaker is not required to acquire a greater interest in that land.

(6) In any case where the acquisition of rights under this article or the imposition of a restriction under paragraph (3) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose such restrictions to the statutory undertaker in question.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(8) No interest in Crown land may be acquired pursuant to this Order unless the appropriate Crown authority consents to such acquisition.

### **Statutory authority to override easements and other rights**

**20.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of land arising by virtue of contract,

caused by the carrying out or use of development authorised by this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract having that effect.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act applies to the construction of paragraph (2) with any necessary modifications.

### **Compulsory acquisition of land – incorporation of the mineral code**

**21.** Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981<sup>(19)</sup> (minerals) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” there is substituted “the undertaker”.

### **Time limit for exercise of authority to acquire rights in land compulsorily**

**22.**—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and

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<sup>(19)</sup> 1981 c. 67.

(b) no declaration may be executed under section 4 of the 1981 Act as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land by the undertaker) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Suspension of private rights**

**23.**—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition of rights or the imposition of restrictions under the Order shall be suspended as is necessary to ensure the operation of this Order and in so far as their continuance would be inconsistent with the exercise of the right acquired or the burden of the restriction imposed—

- (a) as from the date of the acquisition of the right or the benefit of the restriction by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(3) Any person who suffers loss by the suspension of any private right or restrictive covenant under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

(5) Paragraphs (1) and (3) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

- (b) any agreement made, in so far as it relates to the authorised development, at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested, belongs or benefits.

(6) If any such agreement as is referred to in paragraph (5)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(7) Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract having that effect.

### **Extinguishment of private rights and restrictive covenants relating to Western Power Distribution (South Wales) Plc's apparatus removed from land subject to temporary possession**

**24.—**(1) This article applies to any Order land specified in Schedule 8 (land of which temporary possession may be taken) of which the undertaker takes temporary possession under article 27 (temporary use of land by the undertaker).

(2) All private rights vested in Western Power Distribution (South Wales) Plc or restrictive covenants the benefit of which are vested in Western Power Distribution (South Wales) Plc in relation to apparatus removed from any land to which this article applies pursuant to Schedule 1 (authorised development) are extinguished from the date on which the undertaker gives up temporary possession of that land.

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

**25.—**(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

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

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

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

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

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

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

(8) References to the 1965 Act in the 1981 Act are construed as references to the 1965 Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of rights in land under this Order.

### **Rights under or over streets**

**26.**—(1) The undertaker may enter on and use so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land by the undertaker**

**27.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

- (i) so much of the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
- (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;

(b) remove any electric line, electrical plant, structures, apparatus and vegetation from that land;

(c) construct works (including the provision of means of access) on that land; and

(d) construct any works specified in relation to that land in column (2) of Schedule 8, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land referred to in paragraph 1(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 8, or

(b) in the case of land referred to in paragraph 1(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry



under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) The undertaker must provide the owner of any land of which temporary possession has been taken under paragraph (3) with written notice of the date of completion of the work for which temporary possession was taken within 28 days of the completion of those works.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker shall not be required to replace a building removed under this article.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Nothing in this article prevents the undertaker from taking temporary possession more than once in relation to any land specified in Schedule 8.

### **Temporary use of land for maintaining the authorised development**

**28.—**(1) At any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) construct such temporary works (including the provision of means of access) or structures on the land as may be reasonably necessary for that purpose; and
- (c) enter on any land within the Order limits for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised development.

(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(9) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(10) In this article "the maintenance period", in relation to any part of the authorised development means the period of five years beginning with the date on which that part of the authorised development is brought into operational use.

### **Statutory undertakers**

**29.** Schedule 9 (protective provisions) shall have effect and subject to its provisions, the undertaker may—

- (a) acquire rights or impose restrictions over, the land belonging to statutory undertakers shown on the land plans within the Order limits and described in the book of reference; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

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

**30.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) In this paragraph—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003<sup>(20)</sup>; and

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(20) 2003 c.21. There are amendments to the Act which are not relevant to this Order.

“public utility undertaker” has the same meaning as in the 1980 Act.

## PART 6

### Miscellaneous and general

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

**31.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

#### Felling or lopping of trees and removal of hedgerows

**32.—**(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development within or encroaching upon the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development; and
- (b) remove the specified important hedgerows as are within the Order limits and specified in Schedule 11 (removal of important hedgerows).

(5) The power conferred by paragraph (4) shall remove any obligation upon the undertaker to secure any consent to remove those hedgerows under the Hedgerows Regulations 1997<sup>(21)</sup>.

(6) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerows Regulations 1997.

#### Certification of plans

**33.—**(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access and rights of way plans;
- (b) the archaeological written scheme of investigation;
- (c) the book of reference;
- (d) the CEMP;
- (e) the construction management strategy;
- (f) the crown land plans;

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(21) [S.I.1997/1160](#), to which there are amendments not relevant to this Order.

- (g) the CTMP;
- (h) the design drawings;
- (i) the dust management plan;
- (j) the environmental features plans;
- (k) the environmental statement;
- (l) the flood consequence assessment;
- (m) the frac-out contingency plan;
- (n) the habitat management plan;
- (o) the heritage designations plans;
- (p) the invasive weeds management plan;
- (q) the land plans;
- (r) the master key plan;
- (s) the overall location plan;
- (t) the pollution prevention and emergency response plan;
- (u) the public rights of way management strategy;
- (v) the transport assessment;
- (w) the trees and hedges with the potential to be affected plans;
- (x) the waste management plan;
- (y) the water management plan; and
- (z) the works plans,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### Service of notices

**34.—**(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(22)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

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(22) 1978 c. 30. There are amendments to this Act which are not relevant to this Order.

- (b) in any other case, the last known address of that person at the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
  - (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
  - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the Requirement is to be taken to be fulfilled only where—
  - (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
  - (b) the notice or document is capable of being accessed by the recipient;
  - (c) the notice or document is legible in all material respects; and
  - (d) in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
  - (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation is to be final and is to take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article is not to be taken to exclude the employment of any method of service not expressly provided for by it.

## **Arbitration**

**35.** Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

## **Procedure regarding certain approvals**

**36.—(1)** Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order such consent, agreement or approval must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) Schedule 10 is to have effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the Requirements unless otherwise agreed between the undertaker and the relevant planning authority.

### **Crown rights**

**37.—**(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

*Giles Scott*  
Head of Energy Infrastructure Planning and Coal  
Liabilities  
Department for Business, Energy and Industrial  
Strategy

6th October 2016

## SCHEDULES

### SCHEDULE 1

Article 3

#### Authorised development

A nationally significant infrastructure project as defined in sections 14(1)(b) and 16 of the 2008 Act comprising—

- (a) Work No 1 – The installation and keeping of 132kV electric lines above ground of approximately 10.94 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 84 at Grid reference: SN43571 19638 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.
- (b) Work No. 2 - The installation and keeping below ground of a 132kV electric line and fibre optic cable of approximately 3.56 kilometres in length. The 132kV below ground line connects to *Work No.1* at terminal pole number 84 at Grid reference: SN43571 19638, 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:
  - (i) works for the creation, alteration or widening of points of access to highways;
  - (ii) stopping up or diversion of highways;

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (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 below ground including directional drilling, to connect to Work No.3: and
  - (xiii) the provision of a temporary bridge.
- (c) 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.



## SCHEDULE 2

Article 33

## Plans

## PART 1

## Overall location plan

<i>(1) Drawing title</i>	<i>(2) Drawing number</i>	<i>(3) Revision</i>
Overall Location Plan	15/WPD/001	A

## PART 2

## Master key plan

<i>(1) Drawing title</i>	<i>(2) Drawing number</i>	<i>(3) Revision</i>
Master Key Plan	15/WPD/002	A

## PART 3

## Access and rights of way plans

<i>(1) Drawing title</i>	<i>(2) Drawing number</i>	<i>(3) Revision</i>
Access and Rights of Way Plans	Section A Key Plan – 15/WPD/021	A
Access and Rights of Way Plans	Section A Plan Series – 15/WPD/022	A
Access and Rights of Way Plans	Section B Key Plan – 15/WPD/023	A
Access and Rights of Way Plans	Section B Plan Series – 15/WPD/024	A
Access and Rights of Way Plans	Section C Key Plan – 15/WPD/025	A
Access and Rights of Way Plans	Section C Plan Series – 15/WPD/026	A

## PART 4

## Crown land plans

<i>(1) Drawing title</i>	<i>(2) Drawing number</i>	<i>(3) Revision</i>
Crown Land Plans	Section B Key Plan – 15/WPD/045	A

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<i>(1)Drawing title</i>	<i>(2)Drawing number</i>	<i>(3)Revision</i>
Crown Land Plans	Section B Plan Series – 15/WPD/046	A
Crown Land Plans	Section C Key Plan – 15/WPD/047	A
Crown Land Plans	Section C Plan Series – 15/WPD/048	A

## PART 5

### Design drawings

<i>(1)Drawing title</i>	<i>(2)Drawing number</i>	<i>(3)Revision</i>
Key Plan for Design Drawings	15/WPD/100	A
132kV Overhead Line Work No. 1 Profiles	15/WPD/101	A
132kV Overhead Line Work No. 2 Profiles	15/WPD/102	A
132kV Overhead Line Wood Pole Outlines	15/WPD/103	A
Design Drawings 132kV Underground Cables	15/WPD/104	A

## PART 6

### Environmental features plans

<i>(1) Drawing title</i>	<i>(2)Drawing number</i>	<i>(3)Revision</i>
Key Plan for Environmental Features (Section A)	15/WPD/027	B
Key Plan for Environmental Features (Section B)	15/WPD/029	A
Key Plan for Environmental Features (Section C)	15/WPD/031	A
Environmental Features Plan (Section A)	15/WPD/028	B
Environmental Features Plan (Section B)	15/WPD/030	A
Environmental Features Plan (Section C)	15/WPD/032	A

## PART 7

### Heritage designations plans

<i>(1)Drawing title</i>	<i>(2)Drawing number</i>	<i>(3)Revision</i>
Key Plan for Heritage Designations (Section A)	15/WPD/033	A
Key Plan for Heritage Designations (Section B)	15/WPD/035	A
Key Plan for Heritage Designations (Section C)	15/WPD/037	A
Heritage Designations Plan (Section A)	15/WPD/034	B
Heritage Designations Plan (Section B)	15/WPD/036	A
Heritage Designations Plan (Section C)	15/WPD/038	A

## PART 8

### Land plans

<i>(1)Drawing title</i>	<i>(2)Drawing number</i>	<i>(3)Revision</i>
Land Plans	Section A Key Plan – 15/WPD/009	A
Land Plans	Section A Plan Series – 15/WPD/010	C
Land Plans	Section B Key Plan – 15/WPD/011	A
Land Plans	Section B Plan Series – 15/WPD/012	C
Land Plans	Section C Key Plan – 15/WPD/013	A
Land Plans	Section C Plan Series – 15/WPD/014	C

## PART 9

### Trees and Hedges with the potential to be affected plans

<i>(1)Drawing title</i>	<i>(2)Drawing number</i>	<i>(3)Revision</i>
Trees and Hedges with the Potential to be Affected Plans	Section A Key Plan – 15/WPD/039	A

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<i>(1)Drawing title</i>	<i>(2)Drawing number</i>	<i>(3)Revision</i>
Trees and Hedges with the Potential to be Affected Plans	Section A Plan Series – 15/WPD/040	A
Trees and Hedges with the Potential to be Affected Plans	Section B Key Plan – 15/WPD/041	A
Trees and Hedges with the Potential to be Affected Plans	Section B Plan Series – 15/WPD/042	A
Trees and Hedges with the Potential to be Affected Plans	Section C Key Plan – 15/WPD/043	A
Trees and Hedges with the Potential to be Affected Plans	Section C Plan Series – 15/WPD/044	A

## PART 10

### Works plans

<i>(1)Drawing title</i>	<i>(2)Drawing number</i>	<i>(3)Revision</i>
Works Plans	Section A Key Plan – 15/WPD/015	A
Works Plans	Section A Plan Series – 15/WPD/016	A
Works Plans	Section B Key Plan – 15/WPD/017	A
Works Plans	Section B Plan Series – 15/WPD/018	A
Works Plans	Section C Key Plan – 15/WPD/019	A
Works Plans	Section C Plan Series – 15/WPD/020	A

## SCHEDULE 3

Article 3

### Requirements

#### Interpretation

**1.** In this Schedule and in Schedule 9—

“commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words “commence” and “commenced” are to be construed accordingly;

“Nant Morlais Woodland” means so much of the Order limits shown hatched yellow on and so much of the Order limits shown shaded green on Figure 10.2: Botanical Phase 1 Survey Map 1 Issue A to the environmental statement; and

“stage” refers to a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the relevant planning authority pursuant to Requirement 4.

### Time limits

2. The authorised development must commence within 5 years of the date that this Order is made.

### Compliance with approved details

3.—(1) The construction of the poles forming part of the authorised development comprised in Work No 1 and Work No 3 must take place in accordance with the approved drawings listed In Table 1 below subject to the limits of deviation.

(2) For the purposes of Requirement 3(1) the poles must be constructed within the vertical limits of deviation (as set out in article 5(b)(i) and (ii) (limits of deviation) and the lateral limits of deviation (as shown on the works plans)).

**Table 1**

<i>(1)Poles</i>	<i>(2)Drawing sheet number</i>	<i>(3)Pole height (metres)</i>	<i>(4)Pole type (single, twin or terminal four)</i>
1	A/WP/PS/1	12	Twin
2	A/WP/PS/1	14	Single
3	A/WP/PS/1	11	Single
4	A/WP/PS/1	13	Single
5	A/WP/PS/1	15	Twin
6	A/WP/PS/1	15	Single
7	A/WP/PS/1	14	Single
8	A/WP/PS/1	13	Single
9	A/WP/PS/1	14	Twin
10	A/WP/PS/2	15	Single
11	A/WP/PS/2	13	Single
12	A/WP/PS/2	15	Single
13	A/WP/PS/2	12	Single
14	A/WP/PS/2	12	Single
15	A/WP/PS/2	12	Single
16	A/WP/PS/2	12	Single
17	A/WP/PS/2	13	Single
18	A/WP/PS/2	12	Twin

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<i>(1)Poles</i>	<i>(2)Drawing sheet number</i>	<i>(3)Pole height (metres)</i>	<i>(4)Pole type (single, twin or terminal four)</i>
19	A/WP/PS/2	13	Single
20	A/WP/PS/2	12	Single
21	A/WP/PS/2	12	Single
22	A/WP/PS/2	13	Twin
23	A/WP/PS/2	12	Single
24	A/WP/PS/2	14	Twin
25	A/WP/PS/3	13	Twin
26	A/WP/PS/3	12	Single
27	A/WP/PS/3	11	Single
28	A/WP/PS/3	12	Single
29	A/WP/PS/3	11	Single
30	A/WP/PS/3	14	Twin
31	A/WP/PS/3	15	Single
32	A/WP/PS/3	14	Single
33	A/WP/PS/3	13	Single
34	A/WP/PS/3	14	Single
35	A/WP/PS/4	12	Single
36	A/WP/PS/4	12	Single
37	A/WP/PS/4	12	Single
38	A/WP/PS/4	15	Single
39	A/WP/PS/4	13	Twin
40	A/WP/PS/4	13	Twin
41	A/WP/PS/4	12	Single
42	A/WP/PS/4	14	Twin
43	A/WP/PS/4	16	Twin
44	A/WP/PS/4	16	Twin
45	A/WP/PS/5	13	Twin
46	A/WP/PS/5	14	Single
47	A/WP/PS/5	13	Single
48	A/WP/PS/5	13	Twin
49	A/WP/PS/5	12	Single
50	A/WP/PS/5	13	Single
51	A/WP/PS/5	13	Single

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<i>(1)Poles</i>	<i>(2)Drawing sheet number</i>	<i>(3)Pole height (metres)</i>	<i>(4)Pole type (single, twin or terminal four)</i>
52	A/WP/PS/5	13	Single
53	A/WP/PS/5	12	Single
54	A/WP/PS/5	13	Single
55	A/WP/PS/6	14	Single
56	A/WP/PS/6	12	Single
57	A/WP/PS/6	12	Single
58	A/WP/PS/6	12	Single
59	A/WP/PS/6	12	Single
60	A/WP/PS/6	13	Twin
61	A/WP/PS/6	13	Twin
62	A/WP/PS/6	13	Single
63	A/WP/PS/6	15	Single
64	A/WP/PS/6	13	Single
65	A/WP/PS/6	12	Single
66	A/WP/PS/6	13	Single
67	A/WP/PS/6	14	Single
68	A/WP/PS/6	13	Single
69	A/WP/PS/6	14	Single
70	A/WP/PS/7	13	Twin
71	A/WP/PS/7	15	Twin
72	A/WP/PS/7	16	Single
73	A/WP/PS/7	18	Single
74	A/WP/PS/7	17	Twin
75	A/WP/PS/7	13	Single
76	A/WP/PS/7	13	Single
77	A/WP/PS/7	11	Single
78	A/WP/PS/7	15	Single
79	A/WP/PS/7	14	Twin
80	A/WP/PS/7	14	Single
81	A/WP/PS/7	14	Single
82	A/WP/PS/7	17	Single
83	A/WP/PS/7	13	Single
84	A/WP/PS/7	15	Terminal Four

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<i>(1)Poles</i>	<i>(2)Drawing sheet number</i>	<i>(3)Pole height (metres)</i>	<i>(4)Pole type (single, twin or terminal four)</i>
85	Not Used	Not Used	Not Used
86	Not Used	Not Used	Not Used
87	B/WP/PS/2	15	Terminal Four
88	B/WP/PS/2	12	Single
89	B/WP/PS/2	16	Single
90	B/WP/PS/2	12	Single
91	B/WP/PS/2	13	Single
92	C/WP/PS/1	15	Twin
93	C/WP/PS/1	15	Twin
94	C/WP/PS/1	12	Twin
95	C/WP/PS/1	15	Single
96	C/WP/PS/1	16	Single
97	C/WP/PS/1	14	Single
98	C/WP/PS/1	14	Single
99	C/WP/PS/1	13	Twin
100	C/WP/PS/1	12	Single
101	C/WP/PS/1	14	Single
102	C/WP/PS/1	14	Twin
103	C/WP/PS/1	12	Single
104	C/WP/PS/1	12	Single
105	C/WP/PS/2	12	Single
106	C/WP/PS/2	13	Single
107	C/WP/PS/2	13	Single
108	C/WP/PS/2	13	Single
109	C/WP/PS/2	13	Single
110	C/WP/PS/2	12	Single
111	C/WP/PS/2	12	Twin
112	C/WP/PS/2	15	Single
113	C/WP/PS/2	13	Single
114	C/WP/PS/2	15	Single
115	C/WP/PS/2	14	Single
116	C/WP/PS/2	15	Twin
117	C/WP/PS/2	12	Twin



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<i>(1)Poles</i>	<i>(2)Drawing sheet number</i>	<i>(3)Pole height (metres)</i>	<i>(4)Pole type (single, twin or terminal four)</i>
118	C/WP/PS/2	14	Single
119	C/WP/PS/2	12	Single
120	C/WP/PS/3	15	Twin
121	C/WP/PS/3	13	Single
122	C/WP/PS/3	14	Single
123	C/WP/PS/3	14	Single
124	C/WP/PS/3	12	Single
125	C/WP/PS/3	12	Single
126	C/WP/PS/3	12	Twin
127	C/WP/PS/3	14	Twin
128	C/WP/PS/3	14	Twin
129	C/WP/PS/3	12	Single
130	C/WP/PS/3	12	Twin
131	C/WP/PS/3	12	Single
132	C/WP/PS/3	12	Single
133	C/WP/PS/3	12	Single
134	C/WP/PS/3	12	Single
135	C/WP/PS/4	15	Single
136	C/WP/PS/4	15	Single
137	C/WP/PS/4	12	Twin
138	C/WP/PS/4	12	Single
139	C/WP/PS/4	12	Single
140	C/WP/PS/4	12	Single
141	C/WP/PS/4	13	Single
142	C/WP/PS/4	12	Single
143	C/WP/PS/4	11	Single
144	C/WP/PS/4	12	Twin
145	C/WP/PS/4	14	Single
146	C/WP/PS/4	12	Single
147	C/WP/PS/4	15	Single
148	C/WP/PS/4	12	Single
149	C/WP/PS/4	14	Twin
150	C/WP/PS/5	15	Single

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<i>(1)Poles</i>	<i>(2)Drawing sheet number</i>	<i>(3)Pole height (metres)</i>	<i>(4)Pole type (single, twin or terminal four)</i>
151	C/WP/PS/5	12	Single
152	C/WP/PS/5	13	Single
153	C/WP/PS/5	14	Twin
154	C/WP/PS/5	14	Twin
155	C/WP/PS/5	15	Twin
156	C/WP/PS/5	13	Twin
157	C/WP/PS/5	13	Single
158	C/WP/PS/5	14	Single
159	C/WP/PS/5	17	Twin
160	C/WP/PS/5	12	Single
161	C/WP/PS/5	10	Single
162	C/WP/PS/5	15	Single
163	C/WP/PS/6	13	Single
164	C/WP/PS/6	12	Single
165	C/WP/PS/6	12	Single
166	C/WP/PS/6	12	Single
167	C/WP/PS/6	12	Single
168	C/WP/PS/6	12	Single
169	C/WP/PS/6	14	Twin
170	C/WP/PS/6	12	Single within sleeve
171	C/WP/PS/6	13	Single within sleeve
172	C/WP/PS/6	13	Single within sleeve
173	C/WP/PS/7	12	Single
174	C/WP/PS/7	13	Twin
175	C/WP/PS/7	12	Single
176	C/WP/PS/7	13	Single
177	C/WP/PS/7	13	Single
178	C/WP/PS/7	13	Single
179	C/WP/PS/7	15	Twin
180	C/WP/PS/7	15	Twin
181	C/WP/PS/8	14	Twin
182	C/WP/PS/8	12	Twin
183	C/WP/PS/8	11	Twin

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<i>(1)Poles</i>	<i>(2)Drawing sheet number</i>	<i>(3)Pole height (metres)</i>	<i>(4)Pole type (single, twin or terminal four)</i>
184	C/WP/PS/8	12	Twin
185	C/WP/PS/8	12	Twin
186	C/WP/PS/8	11	Twin
187	C/WP/PS/8	13	Twin
188	C/WP/PS/8	11	Twin
189	C/WP/PS/8	11	Twin
190	C/WP/PS/8	13	Twin
191	C/WP/PS/9	14	Twin
192	C/WP/PS/9	12	Twin
193	C/WP/PS/9	11	Twin
194	C/WP/PS/9	11	Twin
195	C/WP/PS/9	11	Twin
196	C/WP/PS/9	11	Twin
197	C/WP/PS/9	14	Twin
198	C/WP/PS/9	12	Twin
199	C/WP/PS/9	12	Twin
200	C/WP/PS/9	12	Twin
201	C/WP/PS/9	14	Twin
202	C/WP/PS/9	13	Twin
203	C/WP/PS/9	13	Twin

### Stages of authorised development

4.—(1) No authorised development may commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved by the relevant planning authority, after consultation with the relevant highway authority.

(2) Written notice of the commencement and completion of each stage of the authorised development and the operational use of that part of the authorised development shall be given to the relevant planning authority and relevant highway authority within 10 business days of the relevant event occurring.

### Restrictions on the limits of deviation

5.—(1) Excluding poles 155 and 203, no pole shall move more than 5m from its location (as shown on the works plans).

(2) The electric line shall not move outside the limits of deviation.

(3) Notwithstanding the approved works plans C/WP/PS/3 and C/WP/PS/5 and subject to Requirement 5 (5) there shall be no deviation of poles 126, 127, 128, 154 and 155 from their

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positions, or access to those poles, without the prior written consent of the relevant planning authority.

(4) Pole 76 shall not be deviated closer to Bryn Meusydd than shown on works plan A/WP/PS/7.

(5) Pole 155 may deviate up to 25m from its location (as shown on the works plans) and within the Order limits provided any deviation is agreed in writing with the landowner.

#### **Restrictions on the limits of deviation near hedgerows and watercourses**

6.—(1) Notwithstanding Requirement 4, poles sited in accordance with the agreed limits of deviation must maintain a minimum distance of 2m from the nearest hedgerow and 7m from the nearest watercourse. No stays should be placed within hedgerows.

(2) Pole 98 shall not be micro-sited south of its location as shown on drawing no. 15/WPD/020 (sheet 1 of 10).

#### **Protection of private water supplies**

7. The underground sections of poles 170, 171 and 172 shall be placed within a concrete sleeve.

#### **HDD drill depths and construction periods**

8.—(1) The horizontal directional drill (HDD) under the River Towy shall be a minimum depth of 5m below the river bed and a minimum of 1.5m below other watercourses.

(2) The HDD under the bed of the River Towy referred to in Requirement 8 (1) shall not take place between 1st April and 30th June in any calendar year.

#### **Highway accesses**

9.—(1) No stage of the authorised development is to commence until written details of the design, layout and subsequent removal (to include the restoration of land) of any new temporary means of access or any new permanent means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority in relation to that stage.

(2) The highway accesses must be constructed in accordance with the approved details under paragraph (1).

#### **Public rights of way**

10.—(1) No stage of the authorised development that would affect any right of way specified in the public rights of way management strategy is to commence until a written implementation plan and specification for the temporary diversion of a right of way has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the relevant planning authority in relation to that stage.

(2) The right of way diversion must be constructed in accordance with the approved plan in paragraph (1).

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

11.—(1) No stage of the authorised development must commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure within the Order limits have, after consultation with the relevant planning authority, been submitted to and approved by the relevant planning authority in relation to that stage.

(2) Any fences or other means of enclosure approved in accordance with sub-paragraph (1) must remain secure during construction of the authorised development, in accordance with the approved details, unless otherwise approved in writing by the relevant planning authority.

(3) Any temporary fencing must be removed on completion of the construction of the authorised development.

### **Contaminated land and groundwater**

**12.—**(1) In the event that contamination is found at any time when carrying out the authorised development that was not previously identified it must be reported in writing immediately to the relevant planning authority. An investigation and risk assessment must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the relevant planning authority in consultation with Natural Resources Wales. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the relevant planning authority in consultation with Natural Resources Wales.

(2) Where remediation is required, a detailed remediation scheme to bring the site to a condition suitable for the intended use must be prepared, and submitted for the written approval of the relevant planning authority in consultation with Natural Resources Wales.

(3) The approved remediation scheme must be carried out in accordance with its terms unless otherwise approved in writing by the relevant planning authority in consultation with Natural Resources Wales.

(4) Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and approved in writing by the relevant planning authority in consultation with Natural Resources Wales.

### **Archaeology**

**13.—**(1) No stage of the authorised development shall commence until a written scheme for the investigation of archaeology consistent with the archaeological written scheme of investigation is submitted to and approved by the relevant planning authority.

(2) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(3) Any archaeological works or watching brief must be carried out in accordance with the approved scheme, unless otherwise agreed in writing by the relevant planning authority.

### **Plans**

**14.** Subject to article 5 (limits of deviation) and any of the other Requirements, the authorised development shall be carried out in accordance with the plans or other documents certified in accordance with article 33 (certification of plans).

### **Habitat management plan**

**15.** Prior to the commencement of any stage of works in areas identified within the habitat management plan, a final habitat management plan consistent with the habitat management plan shall be submitted to and approved by the relevant planning authority. The authorised development shall be implemented, maintained and monitored in accordance with the approved final habitat management plan. Informed by the results of the monitoring, the plan shall be reviewed for a

period up to five years by the undertaker in consultation with the relevant planning authority. Any recommendations or modifications to be made to the plan as a result of the review shall be agreed in writing with the relevant planning authority and implemented.

### **Trees to be affected**

**16.** A protocol shall be prepared, submitted to and approved by the relevant planning authority for the identification of trees to be affected by the authorised development. The protocol shall require information on the species and dimensions of the tree(s) to be affected and the nature of the works to be undertaken to be provided to the relevant planning authority for prior approval a minimum of two weeks before the works commence to such trees. Works shall be undertaken to the affected trees in accordance with the approved protocol.

### **Lighting**

**17.** Details of lighting required to illuminate working areas, including construction compounds shall be submitted to and agreed in writing by the relevant planning authority prior to its first use. The lighting shall be directional and shall not spill onto watercourses, riparian corridors, residential properties or gardens.

### **Construction traffic management plan**

**18.—**(1) No numbered work of the authorised development other than tree felling is to commence until a final CTMP covering that numbered work has been submitted to and approved by the relevant planning authority in consultation with the Department for Transport of the Welsh Government. The final CTMP must be consistent with the CTMP and shall include proposals for the movement of construction traffic including measures to promote sustainable travel. It shall also include—

- (a) site access and traffic management;
  - (b) a routing strategy for construction traffic;
  - (c) the location and means of temporary road closure;
  - (d) the management of public rights of way consistent with the Public Rights of Way Management Strategy;
  - (e) other management matters including conditions surveys and wheel and street cleaning.
- (2) The final CTMP approved under paragraph (1) must be implemented as approved.

### **Temporary bridge**

**19.** Prior to its installation, details showing the location, structural design and appearance of the temporary bridge shall be submitted to and approved by the relevant planning authority. The bridge shall be removed and the land reinstated to the satisfaction of the relevant planning authority within one month following the completion of the cable undergrounding.

### **Construction hours**

**20.—**(1) Subject to sub-paragraphs (2) and (3) construction work must not take place other than between 0700 and 1900 hours, Monday to Friday and 0700 to 1300, Saturday and at no time on bank holidays and Sundays.

(2) Drilling operations must not take place other than between 0700 and 1700 hours on Mondays to Fridays.

(3) Protective netting of scaffolding and its subsequent removal across highways may occur outside of the construction hours.

(4) Stringing of the line across the highway may be undertaken outside of the construction hours subject to the prior written approval of the relevant planning authority.

### **Construction environmental management plan**

**21.**—(1) No authorised development is to commence until a final CEMP has been submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales. The final CEMP must be in accordance with the CEMP and must include the following during construction—

- (a) a waste management plan;
- (b) a pollution prevention and emergency response plan;
- (c) a water management plan; and
- (d) a dust management plan and an invasive weeds management plan.

(2) All construction works must be undertaken in accordance with the CEMP approved under paragraph (1).

### **Restoration of land used temporarily for construction**

**22.** 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 six 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 for written approval**

**23.** Where under any of the Requirements the approval or agreement of the relevant planning authority or another person is required, the matter that requires approval or agreement must be submitted in writing, and that approval or agreement is to be given in writing.

### **Frac-out contingency plan**

**24.**—(1) Prior to the commencement of undergrounding works within Work No. 2, a final frac-out contingency plan consistent with the frac-out contingency plan shall be submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales. The final frac-out contingency plan shall include—

- (a) the persons responsible for implementing the measures to be set out within the plan;
- (b) design protocols and measures to be implemented for the protection of sensitive ecological receptors;
- (c) confirmation of the suitability of the formations to be drilled;
- (d) measures to monitor the drilling process for frac-out; and
- (e) the measures to be initiated to protected sensitive ecological receptors should frac-out occur.

(2) The final frac-out contingency plan must be implemented as approved.

### **Decommissioning**

**25.** Should the authorised development become redundant (as determined by the undertaker) for operational purposes the undertaker shall submit to the relevant planning authority a decommissioning and restoration plan for its prior written approval. The decommissioning and restoration plan shall be implemented as approved and the decommissioning of the authorised

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development and the restoration works shall be completed within 24 months following the approval of the decommissioning and restoration plan.

### **Flooding**

**26.** No authorised development is to commence within areas identified as being at risk of flooding in the flood consequence assessment until a flood risk management strategy and a flood evacuation plan has been submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales. The works shall be implemented in accordance with the approved strategy and plan.

### **Foundation Depths**

**27.** The foundation depths of the above ground electric line poles hereby approved shall not exceed 2.7m measured from natural ground level.

### **Hedgerows**

**28.** 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.

### **Otter Surveys**

**29.—(1)** Prior to the commencement of Work No. 1 within the Nant Morlais Woodland and prior to the commencement of Work No. 2 pre-construction otter surveys shall be undertaken and the results submitted to the relevant planning authority in consultation with Natural Resources Wales.

(2) Work No. 1 within the Nant Morlais Woodland shall not commence and Work No. 2 shall not commence 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.

### **Marsh Fritillary Study**

**30.—(1)** Prior to the commencement of the section of Work No. 3 shown on works plans Section C Drawing Number C/WP/PS/5 in areas where food plants for marsh fritillary butterfly larvae are present, a pre-construction marsh fritillary butterfly study, the methodology for which shall be determined in consultation with Natural Resources Wales, shall be undertaken to establish the presence or absence of marsh fritillary where food plants for marsh fritillary butterfly larvae are present within that area and the results submitted to the relevant planning authority and Natural Resources Wales.

(2) The section of Work No. 3 shown on works plans Section C Drawing Number C/WP/PS/5 in areas where food plants for marsh fritillary butterfly larvae are present shall not commence until either the absence of marsh fritillary is confirmed or the mitigation proposed is agreed by the relevant planning authority in consultation with Natural Resources Wales and implemented.

### **Approved plans and amendments to approved plans**

**31.—(1)** Where a Requirement requires the authorised development to be carried out in accordance with a plan, scheme, statement, strategy, details or protocol (the “plan”) approved by the relevant planning authority or Natural Resources Wales, the approved plan must be taken to include any amendments that may be approved subsequently by the relevant planning authority or Natural Resources Wales (after consulting every person required to be consulted before approval of the original plan).



(2) The relevant planning authority or Natural Resources Wales must not approve the plan or an amendment to the plan unless it is satisfied that the plan or the amendment is unlikely to give rise to any new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 4

Articles 18 and 19

### Modification of compensation and compulsory purchase enactments for creation of new rights

#### Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

#### Modification of the Land Compensation Act 1973

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973<sup>(23)</sup> is to have effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken from” there are to be substituted the words “a right over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are to be substituted the words “over which the right is exercisable.

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

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there is substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

#### Application of the 1965 Act

3.—(1) The 1965 Act is to have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition of land, so that, in appropriate contexts, references in that Act to land are read (according to the Requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or

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(23) 1973 c. 26.

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(b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act is to apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation in case of severance) there is to be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (other provisions as to divided land) there is substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house or building or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that interest, and—
- (c) where that land consists of a house or building, that the right cannot be purchased without material detriment to that land; or
- (d) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Brechfa Forest Wind Farm Connection Order 2016 (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);

- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are to be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is to be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which is to be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is to be modified correspondingly.

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

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

## SCHEDULE 5

Article 10

### Parts of access to be maintained at the public expense

<i>(1) Access number</i>	<i>(2) Grid Reference</i>	<i>(3) Description</i>	<i>(4) New or existing access</i>	<i>(5) Plan reference</i>
70	SN 43501 27282	B4301	New temporary access	C/AR/PS/3
71	SN 43546 27408	B4301	New temporary access	C/AR/PS/3

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## SCHEDULE 6

Article 9

Streets subject to street works

## PART 1

Streets subject to street works – crossing points

<i>(1) Crossing point reference</i>	<i>(2) Grid reference</i>	<i>(3) Description</i>	<i>(4) Span numbers (excluding UG sections where no span number is defined)</i>	<i>(5) Plan reference</i>
CP1	SN 40633 11652	C2057 approximately 365 metres east of Pont Cllwg	7-8	A/LA/PS/1
CP2	SN 40828 12021	U2218 approximately 200 metres North of Fynnon-wen	10-11	A/LA/PS/1
CP3	SN 41312 12653	A484 approximately 430 metres North West of Crugan-fawr	16-17	A/LA/PS/2
CP4	SN 41379 12741	U2220 approximately 85 metres north west of Lanfryn	17-18	A/LA/PS/2
CP5	SN 41841 13881	C2074 approximately 200 metres North West of Bwiche-y-gwynt	27-28	A/LA/PS/3
CP6	SN 42492 15027	U2207 approximately 410 metres east of Lon House	37-38	A/LA/PS/4
CP7	SN 42912 15430	B4309 approximately 360 metres North of Bancycafel	41-42	A/LA/PS/4
CP8	SN 43399 15735	B4306 approximately 200 metres North West of Garthowen	45-46	A/LA/PS/5

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<i>(1) Crossing point reference</i>	<i>(2) Grid reference</i>	<i>(3) Description</i>	<i>(4) Span numbers (excluding UG sections where no span number is defined)</i>	<i>(5) Plan reference</i>
CP9	SN 44152 18205	U2203 approximately 200m east of Beaulieu-Fawr	69-70	A/LA/PS/6
CP10	SN 44029 18358	A48 approximately 200 metres north of Beaulieu-Fawr	70-71	A/LA/PS/6
CP11	SN 43784 18661	C2071, approximately 200 metres North west of Plas-y-Wern	73-74	A/LA/PS/7
CP12	SN 43460 18980	C2070 approximately 240 metres north of Brynmeusydd	78-79	A/LA/PS/7
CP13 Undergrounded	SN 43499 19961	BOAT number 28/20/1 approximately 250 metres east of Pant	86- Underground	A/LA/PS/7
CP14 Undergrounded	SN 43476 20057	B4300 approximately 250 metres north east of Pant	Underground	B/LA/PS/1
CP15 Undergrounded	SN 43391 21039	Abergwili Road C2030, approximately 30 metres east of Abergwili bridge	Underground	B/LA/PS/1
CP16 Undergrounded	SN 43372 21251	A40 approximately 190 metres east of A40/A485 Junction	Underground	B/LA/PS/1
CP17 Undergrounded	From SN 43203 22016  Undergrounded to SN 43346 22627	A485 approximately 150 metres North East of Glangwili Bridge -undergrounding then follows the route of the A485 to approximately 10 metres south	Underground	B/LA/PS/2

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<i>(1) Crossing point reference</i>	<i>(2) Grid reference</i>	<i>(3) Description</i>	<i>(4) Span numbers (excluding UG sections where no span number is defined)</i>	<i>(5) Plan reference</i>
		of A485/U2095 Junction		
CP18	SN 43001 22697	U2095 approximately 340 metres west of U2095/A485 junction	Underground-87	B/LA/PS/2
CP19	SN 42959 23796	C2048 approximately 85 metres east of Rhydfwyalchen	94-95	C/LA/PS/1
CP20	SN 42872 24448	U2097 approximately 500 metres east of Trefynys	100-101	C/LA/PS/1
CP21	SN 43505 25447	U2098 approximately 340m north west of the U2098/A485 junction	110-111	C/LA/PS/2
CP22	SN 43458 26278	U5550 approximately 360 metres west of U5550/A485 junction	117-118	C/LA/PS/2
CP23	SN 43504 27181	U5551 approximately 50m east of U5551/B4301 junction	125-126	C/LA/PS/3
CP24	SN 43682 27617	U5552 approximately 45m east of U5552/B4301 junction	128-129	C/LA/PS/3
CP25	SN 43737 27782	B4301 approximately 160m north east of U5552/B4301 junction	130-131	C/LA/PS/3
CP26	SN 44248 29257	C1317 approximately 100 metres west of	144-145	C/LA/PS/4

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<i>(1) Crossing point reference</i>	<i>(2) Grid reference</i>	<i>(3) Description</i>	<i>(4) Span numbers (excluding UG sections where no span number is defined)</i>	<i>(5) Plan reference</i>
		C1317/A485 junction		
CP27	SN 44384 30890	A485 approximately 150 metres north Dyffryn-Croes	159-160	C/LA/PS/5

## PART 2

### Streets subject to street works – accesses

<i>(1) Access number</i>	<i>(2) Grid reference</i>	<i>(3) Road accessed</i>	<i>(4) Description</i>	<i>(5) Plan reference</i>	<i>(6) New or existing access</i>
1	SN 39993 11366	C2057	Gated field access	A/AR/PS/1	Existing
2	SN 40124 11404	C2057	Gated field access	A/AR/PS/1	Existing
3	SN 40227 11451	C2057	Gated field access	A/AR/PS/1	Existing
4	SN 40597 11624	C2057	Farm/private access road/track	A/AR/PS/1	Existing
5	SN 40676 11694	C2057	Gated field access	A/AR/PS/1	Existing
6	SN 40785 11778	C2057	Gated field access	A/AR/PS/1	Existing
7	SN 40808 12191	U2218	Gated field access	A/AR/PS/1	Existing
8	SN 41290 12259	A484	Gated field access	A/AR/PS/2	Existing
9	SN 413117 12501	A484	Gated field access	A/AR/PS/2	Existing
10	SN 41538 12644	U2220	Gated field access	A/AR/PS/2	Existing
11	SN 41447 12705	U2220	Gated field access	A/AR/PS/2	Existing
12	SN 41442 13472	C2074	Gated field access	A/AR/PS/2	Existing

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(1)Access number	(2)Grid reference	(3)Road accessed	(4)Description	(5)Plan reference	(6)New or existing access
13	SN 41724 13575	C2074	Gated field access	A/AR/PS/2	Existing
14	SN 41775 13599	C2074	Gated field access	A/AR/PS/2	Existing
15	SN 41883 13922	C2074	Gated field access	A/AR/PS/3	Existing
16	SN 41885 13937	C2074	Gated field access	A/AR/PS/3	Existing
17	SN 41276 14115	A484	Farm/private access road/track	A/AR/PS/3	Existing
18	SN 42214 14365	C2074	Gated field access	A/AR/PS/3	Existing
19	SN 42324 14521	C2074	Gated field access	A/AR/PS/3	Existing
20	SN 42247 14991	U2207	Gated field access	A/AR/PS/4	Existing
21	SN 42721 15071	U2207	Gated field access	A/AR/PS/4	Existing
22	SN 42890 15563	B4309	Farm/private access road/track	A/AR/PS/4	Existing
23	SN 43359 15757	B4306	Gated field access	A/AR/PS/5	Existing
24	SN 43361 15762	B4306	Gated field access	A/AR/PS/5	Existing
25	SN 43468 15692	B4306	Gated field access	A/AR/PS/5	Existing
26	SN 43046 15958	B4306	Farm/private access road/track	A/AR/PS/4	Existing
27	SN 44330 16405	U2221	Farm/private access road/track	A/AR/PS/5	Existing
28	SN 44906 17212	U2201	Gated field access	A/AR/PS/6	Existing
29	SN 44770 17415	C2071	Gated field access	A/AR/PS/6	Existing
30	SN 44754 17474	C2071	Gated field access	A/AR/PS/6	Existing
31	SN 44718 17580	C2071	Gated field access	A/AR/PS/6	Existing
32	SN 44556 17874	C2071	Gated field access	A/AR/PS/6	Existing



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(1)Access number	(2)Grid reference	(3)Road accessed	(4)Description	(5)Plan reference	(6)New or existing access
33	SN 44437 18003	C2071	Gated field access	A/AR/PS/6	Existing
34	SN 44123 18179	U2203	Gated field access	A/AR/PS/6	Existing
35	SN 44153 18211	U2203	Gated field access	A/AR/PS/6	Existing
36	SN 44154 18467	U2169	Gated field access	A/AR/PS/7	Existing
37	SN 44121 18479	U2169	Gated field access	A/AR/PS/7	Existing
38	SN 43993 18619	U2169	Gated field access	A/AR/PS/7	Existing
39	SN 43834 18659	C2071	Gated field access	A/AR/PS/7	Existing
40	SN 43693 19010	C2070	Gated field access	A/AR/PS/7	Existing
41	SN 43555 18980	C2070	Gated field access	A/AR/PS/7	Existing
42	SN 43686 19020	C2070	Gated field access	A/AR/PS/7	Existing
43	SN 43352 19031	W4488	Farm/private access road/track	A/AR/PS/7	Existing
44	SN 43412 19234	W4488	Gated field access	A/AR/PS/7	Existing
45	SN 43416 19406	W4488	Gated field access	A/AR/PS/7	Existing
46	SN 43309 19517	W4488	Farm/private access road/track	A/AR/PS/7	Existing
47	SN 43566 19939	BOAT 28/20/1	New temporary access	A/AR/PS/7	New Access
48	SN 43464 21042	C2030	Gated field access	B/AR/PS/1	Existing
49	SN 43429 21053	C2030	Gated field access	B/AR/PS/1	Existing
50	SN 43218 22005	A485	Farm/private access road/track	B/AR/PS/2	Existing
51	SN 42916 22593	U2094	Gated field access	B/AR/PS/2	Existing

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(1)Access number	(2)Grid reference	(3)Road accessed	(4)Description	(5)Plan reference	(6)New or existing access
52	SN 42863 22748	U2095	Gated field access	B/AR/PS/2	Existing
53	SN 42825 22778	U2094	Farm/private access road/track	B/AR/PS/2	Existing
54	SN 42589 23373	U2094	Farm/private access road/track	B/AR/PS/2	Existing
55	SN 42877 23747	C2048	Gated field access	C/AR/PS/1	Existing
56	SN 42907 23776	C2048	Gated field access	C/AR/PS/1	Existing
57	SN 42581 24506	U2097	New temporary access	C/AR/PS/1	New Access
58	SN 42745 24485	U2097	Gated field access	C/AR/PS/1	Existing
59	SN 42753 24494	U2097	Gated field access	C/AR/PS/1	Existing
60	SN 42742 24497	U2097	Farm/private access road/track	C/AR/PS/1	Existing
61	SN 43521 25424	U2098	Gated field access	C/AR/PS/2	Existing
62	SN 43517 25451	U2098	Gated field access	C/AR/PS/2	Existing
63	SN 43711 25796	A485	Farm/private access road/track	C/AR/PS/2	Existing
64	SN 43733 25950	A485	Gated field access	C/AR/PS/2	Existing
65	SN 43754 26065	A485	Gated field access	C/AR/PS/2	Existing
66	SN 43265 26265	U5550	Gated field access	C/AR/PS/2	Existing
67	SN 43573 26296	U5550	Gated field access	C/AR/PS/2	Existing
68	SN 43216 26488	U5550	Gated field access	C/AR/PS/2	Existing
69	SN 43538 27144	U5551	Gated field access	C/AR/PS/3	Existing
70	SN 43501 27282	B4301	New temporary access	C/AR/PS/3	New Access
71	SN 43546 27408	B4301	New temporary	C/AR/PS/3	New Access

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(1)Access number	(2)Grid reference	(3)Road accessed	(4)Description	(5)Plan reference	(6)New or existing access
			access		
72	SN 43870 27529	U5552	Gated field access	C/AR/PS/3	Existing
73	SN 43872 27538	U5552	Gated field access	C/AR/PS/3	Existing
74	SN 43652 27648	B4301	Farm/private access road/track	C/AR/PS/3	Existing
75	SN 43588 27708	U5552	Gated field access	C/AR/PS/3	Existing
76	SN 43304 27961	U5552	Farm/private access road/track	C/AR/PS/3	Existing
77	SN 44135 28254	B4301	Gated field access	C/AR/PS/3	Existing
78	SN 44259 28619	A485	Farm/private access road/track	C/AR/PS/4	Existing
79	SN 44312 28856	A485	Gated field access	C/AR/PS/4	Existing
80	SN 44308 29249	C1317	Gated field access	C/AR/PS/4	Existing
81	SN 44348 29416	A485	Gated field access	C/AR/PS/4	Existing
82	SN 44329 29544	A485	Gated field access	C/AR/PS/4	Existing
83	SN 44076 30220	U5500	Farm/private access road/track	C/AR/PS/4	Existing
84	SN 44326 30281	A485	Farm/private access road/track	C/AR/PS/4	Existing
85	SN 44374 30927	A485	Gated field access	C/AR/PS/5	Existing
86	SN 44406 30993	A485	Gated field access	C/AR/PS/5	Existing
87	SN 44446 31161	A485	Farm/private access road/track	C/AR/PS/5	Existing
88	SN 45052 31513	U5502	Farm/private access road/track	C/AR/PS/6	Existing
89	SN 45796 31211	U5501	Farm/private access road/track	C/AR/PS/6	Existing
90	SN 46349 29444	C1317	Farm/private access road/track	C/AR/PS/10	Existing

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## SCHEDULE 7

Article 11

## Streets/rights of way to be temporarily closed

<i>(1)Span number (excluding UG sections and access routes where no span numbers are defined)</i>	<i>(2)Street or public right of way to be temporarily closed, altered or diverted</i>	<i>(3)Extent of temporary closure, alteration or diversion as shown on the access and rights of way plans</i>	<i>(4)Plan reference</i>	<i>(5)Type of effect</i>
7-8	Street, C2057	50m	A/AR/PS/1	Temporary Closure
10-11	Street, U2218	26m	A/AR/PS/1	Temporary Closure
11-12	PRoW – 29/20/1 Footpath	26m	A/AR/PS/1	Temporary Closure
16-17	Street, A484	44m	A/AR/PS/2	Temporary Closure
17-18	Street,U2220	25m	A/AR/PS/2	Temporary Closure
27-28	Street, C2074	35m	A/AR/PS/3	Temporary Closure
34-35	PRoW -29/10/1 Footpath	26m	A/AR/PS/3	Temporary Closure
37-38	Street, U2207	33m	A/AR/PS/4	Temporary Closure
41-42	Street, B4309	34m	A/AR/PS/4	Temporary Closure
45-46	Street,B4306	34m	A/AR/PS/5	Temporary Closure
52-53	PRoW-28/15/1 BOAT	18m	A/AR/PS/5	Temporary Closure
69-70	Street, U2203	25m	A/AR/PS/6	Temporary Closure
70-71	Street, A48	50m	A/AR/PS/6	Temporary Closure
73-74	Street,C2071	70m	A/AR/PS/7	Temporary Closure
78-79	Street, C2070	40m	A/AR/PS/7	Temporary Closure

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<i>(1)Span number (excluding UG sections and access routes where no span numbers are defined)</i>	<i>(2)Street or public right of way to be temporarily closed, altered or diverted</i>	<i>(3)Extent of temporary closure, alteration or diversion as shown on the access and rights of way plans</i>	<i>(4)Plan reference</i>	<i>(5)Type of effect</i>
83-84	PRoW – 28/20/2 BOAT	55m	A/AR/PS/7	Temporary Closure
86-Underground cable	PRoW – 28/20/1 BOAT	22m	A/AR/PS/7	Temporary Closure
Underground cable	Street, A485	685m	B/AR/PS/2	Temporary Closure
Underground cable	PRoW-2/8/1 Footpath	31m	B/AR/PS/2	Temporary Diversion
Underground cable -87	Street, U2095	44m	B/AR/PS/2	Temporary Closure
94-95	Street, C2048	25m	C/AR/PS/1	Temporary Closure
100-101	Street,U2097	26m	C/AR/PS/1	Temporary Closure
110-111	Street,U2098	26m	C/AR/PS/2	Temporary Closure
115-116	PRoW- 27/32/1 Footpath	29m	C/AR/PS/2	Temporary Closure
117-118	Street,U5550	26m	C/AR/PS/2	Temporary Closure
125-126	Street, U5551	27m	C/AR/PS/3	Temporary Closure
128-129	Street, U5552	25m	C/AR/PS/3	Temporary Closure
130-131	Street, B4301	60m	C/AR/PS/3	Temporary Closure
135-136	PRoW- 27/14/1 Footpath	40m	C/AR/PS/3	Temporary Closure
135-136	PRoW -26/8/1 Footpath	55m	C/AR/PS/3	Temporary Closure

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<i>(1)Span number (excluding UG sections and access routes where no span numbers are defined)</i>	<i>(2)Street or public right of way to be temporarily closed, altered or diverted</i>	<i>(3)Extent of temporary closure, alteration or diversion as shown on the access and rights of way plans</i>	<i>(4)Plan reference</i>	<i>(5)Type of effect</i>
144-145	Street, C1317	27m	C/AR/PS/4	Temporary Closure
152-153	PRoW -26/9/1 Footpath	42m	C/AR/PS/4	Temporary Closure
155-156	PRoW – 26/11/2 Footpath	16m	C/AR/PS/5	Temporary Closure
159-160	Street, A485	50m	C/AR/PS/5	Temporary Closure
166-167	PRoW - 27/5/1 Footpath	25m	C/AR/PS/6	Temporary Closure
171-172	PRoW – 27/10/1 Footpath	58m	C/AR/PS/6	Temporary Closure
171-172	PRoW –27/10/2 Footpath	58m	C/AR/PS/6	Temporary Closure
Access 49	PRoW – 2/1/1A	7.5M	B/AR/PS/1	Temporary Closure
Access 90	PRoW – 27/11/1	150M	C/AR/PS/10	Temporary Closure

## SCHEDULE 8

Article 27

## Land of which temporary possession may be taken

<i>(1)Number of land shown on the land plans</i>	<i>(2)Purpose for which temporary possession may be taken</i>	<i>(3)Relevant part of the authorised development</i>
A13	Mitigation works (dormouse woodland)	Work No. 1
A14	Mitigation works (dormouse woodland)	Work No. 1

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<i>(1)Number of land shown on the land plans</i>	<i>(2)Purpose for which temporary possession may be taken</i>	<i>(3)Relevant part of the authorised development</i>
A16	Mitigation works (dormouse woodland)	Work No. 1
A162	Mitigation works (hydrology)	Work No. 1
A163	Mitigation works (hydrology)	Work No. 1
A272	Works comprising temporary working area for the construction of the underground cables	Work No. 2
A274	Works comprising temporary working area for the construction of the underground cables	Work No. 2
A277	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B7	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B8	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B11	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B12	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B13	Mitigation works (hydrology)	Work No. 2
B14	Works comprising temporary bridge for access working area for the underground cables	Work No. 2
B15	Works comprising temporary bridge for access working area for the underground cables	Work No. 2
B16	Works comprising temporary bridge for access working area for the underground cables	Work No. 2

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<i>(1)Number of land shown on the land plans</i>	<i>(2)Purpose for which temporary possession may be taken</i>	<i>(3)Relevant part of the authorised development</i>
B17	Mitigation works (hydrology)	Work No. 2
B18	Mitigation works (hydrology)	Work No. 2
B19	Mitigation works (hydrology)	Work No. 2
B20	Works comprising temporary bridge for access working area for the underground cables	Work No. 2
B21	Works comprising temporary bridge for access working area for the underground cables	Work No. 2
B23	Works comprising temporary bridge for access working area for the underground cables	Work No. 2
B24	Works comprising temporary bridge for access working area for the underground cables	Work No. 2
B25.1	Mitigation works (hydrology)	Work No. 2
B25.2	Mitigation works (hydrology)	Work No. 2
B31	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B39	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B40	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B43	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B44	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B45	Works comprising temporary working area for the construction of the underground cables	Work No. 2



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<i>(1)Number of land shown on the land plans</i>	<i>(2)Purpose for which temporary possession may be taken</i>	<i>(3)Relevant part of the authorised development</i>
B52	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B54	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B55	Works comprising temporary working area for the construction of the underground cables	Work No. 2
B56	Mitigation works (hydrology)	Work No. 2
B57	Mitigation works (hydrology)	Work No. 2
B58	Mitigation works (hydrology)	Work No. 2
B66	Works comprising temporary construction for the underground satellite compound	Work No. 2
C173	Mitigation works (hydrology)	Work No. 3
C174	Mitigation works (hydrology)	Work No. 3
C218	Works comprising temporary construction for the underground satellite compound	Work No. 3

## SCHEDULE 9

Article 29

### Protective provisions

## PART 1

### For the protection of oil undertakers

**1.—**(1) For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions are to have effect, unless otherwise agreed in writing at any time between the undertaker and the statutory undertaker concerned.

(2) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfill its statutory functions in a manner not less efficient than previously;

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“apparatus” means in the case of Mainline Pipelines Limited, any pipeline, apparatus and works (as described in section 65 (3) of the Pipe-lines Act 1962<sup>(24)</sup>) belonging to or maintained by Mainline Pipelines Limited for the purposes of oil supply, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“Mainline Pipelines Limited” means Mainline Pipelines Limited (company number 00995545) whose registered office is at 11 Old Jewry, London EC2R 8DU; and

“statutory undertaker” means Mainline Pipelines Limited and its successors in title and function, for the area of the authorised development, and in relation to any apparatus, means the undertaker for whom it belongs or by whom it is maintained.

2. This Part of this Schedule does not apply to apparatus in respect of which the relations between the statutory undertaker and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

3. Regardless of any provision in this Order or anything shown on the land plans, the undertaker is not to acquire any apparatus otherwise than by agreement.

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus is not to be removed under this Part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land is not to be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that Requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35, and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in sub-paragraph (5) is to authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

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(24) 1962 c.58.

**5.—**(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 4(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that paragraph, the statutory undertaker must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable Requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any Requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that Requirement, sub-paragraphs (1) to (4) are to apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph is to preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

**6.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the proper and reasonable expenses reasonably incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.
- (5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) is to, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## PART 2

### For the protection of National Grid Gas plc and National Grid Electricity Transmission Plc

#### Application

1. For the protection of the protected persons referred to in this part of this Schedule the following provisions shall have effect, unless otherwise agreed in writing between the undertaker and the protected person concerned.

#### Interpretation

2. In this Part of this Schedule—

“apparatus” means—

- (a) in the case of an electricity protected person, electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by that protected person;
- (b) in the case of a gas protected person, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“authorised works” has the same meaning as in Schedule 1 (authorised development) of this Order;

“commencement” has the same meaning as in paragraph 1 of Schedule 3 (Requirements) and commence shall be construed to have the same meaning;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the protected person (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence appropriate for the nature of the works which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for the protected person’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus in land includes a reference to apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus of the protected person including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“protected person” means—

(c) any licence holder within the meaning of Part 1 of the 1989 Act; and

(d) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(25)</sup>;

“specified works” means any of the authorised works that are works referred to in paragraph 8 of “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation Requirements for third parties T/SP/SSW/22”.

3. Except for paragraphs 5 and 6 (retained apparatus: protection), 7 (expenses) and 8 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

### Acquisition of land

4. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any land interest or apparatus or override any easement or other interest of the protected person otherwise than by agreement.

### Retained apparatus—Protection—Gas Protected Persons

5.—(1) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, or where construction access is to be taken over, any apparatus the undertaker shall submit to the protected persons in question a plan.

(2) In relation to works or construction access which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, or works that are specified works, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works or access route;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) a ground monitoring scheme.

(3) The undertaker shall not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

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(25) 1986 c.44.

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(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable Requirements as may be made in accordance with sub-paragraph (5) or (7) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where protected persons require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected persons' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) and the protected persons shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (4) (except in an emergency).

(8) If a protected person in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that Requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation Requirements for third parties T/SP/SSW22" and HSE's "HS(G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works the undertaker shall implement an appropriate ground mitigation scheme save that the protected person retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 7.

#### **Retained apparatus—Protection—Electricity Undertakers**

6.—(1) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, or where construction access is to be taken over, any apparatus the undertaker shall submit to the protected person in question a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works or construction access which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works or access route;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) a ground monitoring scheme.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2) —

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers.
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of OHL construction traffic

(4) The undertaker shall not commence any works to which sub-paragraph (2) or (3) apply until the protected person has given written approval of the plan so submitted.

(5) Any approval of the protected person required under sub-paragraph (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);
- (b) shall not be unreasonably withheld.

(6) In relation to a work to which sub-paragraph (2) or (3) apply, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and the protected person in accordance with such reasonable Requirements as may be made in accordance with sub-paragraph (6) or (8) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

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(8) Where protected persons require any protective works to be carried out either themselves or by the promoter (whether of a temporary or permanent nature) such protective works shall be carried out to the protected persons' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) and the protected persons shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (5) (except in an emergency).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works the undertaker shall implement an appropriate ground mitigation scheme save that the protected person retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 7.

## Expenses

7.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to a protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person in, or in connection with, the inspection, or protection of any apparatus of any such works as are referred to in this Schedule including without limitation—

- (a) the cutting off of any apparatus from any other apparatus;
- (b) the approval of plans;
- (c) the carrying out of protective works (including but not limited to cathodic protection) plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (d) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) An amount which apart from this sub-paragraph would be payable to a protected person in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the protected person any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## Indemnity

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in direct consequence of the construction, use,



maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or property of a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and
- (b) indemnify that protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any Requirement of a protected person or under its supervision shall not (subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of this sub-paragraph (1)).

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a protected person, its officers, servants, contractors or agents.

(4) A protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering its representations.

### **Enactments and agreements**

9. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

10. Where in consequence of the proposed construction of any of the authorised development a protected person makes Requirements for the protection or alteration of apparatus under paragraphs 5 and/or 6 the undertaker shall use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the protected person's undertaking and each protected person shall use all reasonable endeavours to co-operate with the undertaker for that purpose.

### **Access**

11. If in consequence of the agreement reached in accordance with paragraph 4 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

12. Any difference or dispute arising between the undertaker and a protected person under this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 35 (arbitration).

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## PART 3

### For the protection of Dwr Cymru Cyfyngedig

1. For the protection of DCC referred to in this Part 3 of Schedule 9, the following provisions shall, unless otherwise agreed in writing between the undertaker and DCC, have effect.

2. In this Part of this Schedule—

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

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

“clearance area” means the area of land—

- (a) within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;
- (b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is between 300mm and 600mm in diameter ;
- (c) within 9 metres either side of the centre line of a rising main; and
- (d) applicable for any strategic asset crossing site.

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

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

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

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

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

“WIA 1991” means the Water Industry Act 1991(26); and

“works” means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are near to, or will or may in any way affect any DCC apparatus together with all ancillary actions relating hereto; and

for the avoidance of doubt, all other terms are as defined in Article 2 of this Order.

3.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Schedule.

(26) 1991 c.56.

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

### **Precedence of the Water Industry Act 1991**

4.—(1) Regardless of any provision of this Order and this Schedule the undertaker shall comply fully with all provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus and nothing in this Order shall release the undertaker from the Requirement to comply with the provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DCC apparatus, including without limitation—

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

(2) The arbitration provisions at article 35 or specified in this Schedule shall not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.

### **Protection of DCC apparatus**

5.—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DCC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 4(k), the undertaker shall submit to DCC written notice together with a draft specification.

(2) DCC shall examine the draft specification submitted under sub-paragraph 5(1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph 5(2) shall be repeated where those amendments are not accepted). For the avoidance of doubt, DCC's proposed amendments may include such reasonable Requirements for the alteration (including but not limited to the extension of DCC apparatus) or otherwise for the protection of DCC apparatus, or for securing access to it.

(3) Once approved under sub-paragraph 5(2), the draft specification shall become the specification and the works shall be executed only in accordance with the specification and such reasonable Requirements as may be made in accordance with sub-paragraph 5(2) and DCC shall be entitled to watch and inspect the execution of those works.

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(4) Nothing in this paragraph 5 shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 5 shall apply to and in respect of the new draft specification.

(5) The undertaker shall not be required to comply with sub-paragraph 5(1) in a case of emergency provided it has complied with paragraph 8 below save that the undertaker shall comply with sub-paragraphs 5(1) and (3) above in so far as is reasonably practicable in the circumstances.

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

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

(7) Only those contractors that satisfy DCC's reasonable health and safety Requirements are permitted to make openings into and/or connections with and/or carry out any works on or within any public sewer or drain vested in DCC unless otherwise agreed with DCC.

(8) Only DCC is permitted to make openings into and/or connections with and/or carry out any works on or within any public water main vested in DCC unless otherwise agreed with DCC.

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

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

### **Suspension of works**

**6.—**(1) DCC shall be entitled to instruct the undertaker to suspend the works if in DCC's reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DCC apparatus and/or are likely to cause or result in damage to any DCC apparatus and/or have caused or are likely to cause damage to the environment arising as a result of damage to DCC apparatus. In the event of such instruction being given by DCC—

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

- (e) DCC shall commence, carry out and complete any remedial works pursuant to sub-paragraph 6(1), as soon as reasonably practicable and DCC shall give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker shall be entitled to resume the works.

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

7.—(1) In the event that either the undertaker or DCC (for the purpose of this paragraph 7 “the party” or together “the parties”) wishes to take any action which would impact on the ability of the undertaker to carry out the development or DCC to carry out its statutory functions, the parties shall use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party’s works. In respect of the references to ‘work’ and ‘works’ in this sub-paragraph 7(1), to the extent that this refers to ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 2 of this Part does not apply.

(2) Subject to paragraph 8, differences or disputes arising between the undertaker and DCC under this Schedule shall, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 35 (arbitration) of the Order.

### **Emergency Works**

8.—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works.

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

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

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

## **PART 4**

### **For the protection of Wales and West Utilities Limited**

#### **Application**

1. For the protection of the protected person referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person, have effect.

#### **Interpretation**

2. In this Part of this Schedule—

“acceptable insurance” means third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £10,000,000 (Ten Million Pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the entire construction period of the authorised works;

“apparatus” means in the case of the protected person, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

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“authorised works” has the same meaning as in Schedule 1 (authorised development) of this Order;

“commencement” has the same meaning as in paragraph 1 of Schedule 3 (Requirements) and commence shall be construed to have the same meaning;

“functions” includes powers and duties;

“in” in a context referring to apparatus in land includes a reference to apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus of the protected person including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“protected person” means Wales and West Utilities Limited, a limited company registered under Company No 05046791 and having its registered office at Wales & West House, Spooner Close Coedkernew, Newport, South Wales NP10 8FZ, being a gas transporter within the meaning of Part 1 of the Gas Act 1986; and

3. Except for paragraphs 5 (retained apparatus: Protection Gas Undertakers) and 6 (expenses) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

### **Acquisition of Land**

4. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker shall not acquire any land interest or apparatus or override any easement or other interest of the protected person otherwise than by agreement.

### **Retained apparatus: Protection: Protected Persons**

5.—(1) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, any apparatus the undertaker shall submit to the protected person in question a plan.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) intended maintenance regimes.

(3) The undertaker shall not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);

(b) shall not subject to sub-paragraph 4(a) be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable Requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the protection of the apparatus, for securing access to the apparatus, and the protected person shall be entitled to watch and inspect the execution of this works.

(7) Where protected persons require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected persons' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) and the protected person shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (4) (except in an emergency).

(8) If the protected person in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that Requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph (7).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

(a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with Wales and West Utilities Limited's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of pipelines and associated installation operating above 2 BAR's" and HSE's "HSG47 Avoiding Danger from underground services".

## Expenses

6.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to the protected person on demand all charges, costs and expenses reasonably committed or incurred by the protected person in, or in connection with, the inspection, removal, alteration, relaying or replacing or protection of any apparatus or the construction of any new apparatus which may be required as a direct consequence of the execution of any such works as are referred to in this Schedule including without limitation—

(a) the cutting off of any apparatus from any other apparatus;

(b) the approval of plans;

(c) the carrying out of protective works (including any temporary protective works and their removal);

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- (d) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.
- (2) The undertaker shall not be liable to the protected person pursuant to paragraph (1) unless the protected person has submitted to and agreed with the undertaker details of the works required unless such works are required in an emergency.
- (3) An amount which apart from this sub-paragraph would be payable to the protected person in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the protected person any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### **Indemnity**

7.—(1) If by reason or in consequence of the construction of any such works authorised by this Order or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Order or any subsidence resulting from any of these works), any damage is caused to any apparatus or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by the protected person in making good such damage or restoring the supply; and
  - (b) indemnify the protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party as aforesaid.
- (2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any Requirement of the protected person or under its supervision shall not, excuse the undertaker from liability under the provisions of sub-paragraph (1) except where such act or thing done has been done as a result of the negligence of the protected person.
- (3) The protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and taking into account its representations.
- (4) Not commence construction (and not to permit the commencement of such construction) of the authorised works on any land either owned by the protected person in respect of which the protected person has an easement or wayleave for their Apparatus or any other interest or to carry out any works within 15 metres of the protected person's Apparatus unless and until the protected person is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to the protected person that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and the protected person has confirmed the same in writing to the undertaker.
- (5) Notwithstanding any other provision in this Schedule and or the provisions of sub-paragraph 7(2) of this Schedule and for the avoidance of doubt, the protected person shall not be deemed whether by admission, approval, consent, confirmation, acknowledgement, inspection or otherwise to have assumed any responsibility for the plan or any authorised works (without limitation) carried



out or to be carried out nor shall the protected person be deemed to have accepted, acknowledged or given or made any representation that the authorised works shall not cause any damage to any Apparatus.

### **Enactments and agreements**

8. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

9. Where in consequence of the proposed construction of any of the authorised works the protected person makes Requirements for the protection or alteration of apparatus under paragraphs 5 the undertaker shall use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the protected person's undertaking and the protected person shall use all reasonable endeavours to co-operate with the undertaker for that purpose.

### **Access**

10. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

11. Any difference or dispute arising between the undertaker and the protected person under this Schedule shall, unless otherwise agreed in writing between the undertaker and the protected person, be determined by arbitration in accordance with article 35 (arbitration).

## **PART 5**

### **For the protection of operators of electronic communications code networks**

1. For the protection of any operator, the following provisions are to have effect, unless otherwise agreed in writing between the undertaker and the operator.

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(27);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

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(27) 2003 c. 21. There are amendments to the Act which are not relevant to this Order.

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- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of, or paragraph 17 of Schedule 18 to, the 2003 Act; and

“operator” means the operator of an electronic communications code network.

**3.** The exercise of the powers of article 30 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984<sup>(28)</sup>.

**4.—(1)** Subject to sub-paragraphs (2) and (3), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator) the undertaker must bear and pay the cost reasonably and properly incurred by the operator in making good such damage.

(2) Nothing in sub-paragraph (1) is to impose any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) Any difference arising between the undertaker and the operator under this paragraph is to be referred to and settled by arbitration under article 35 (arbitration).

**5.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage caused by electro-magnetic interference arising from the construction or use of the authorised development.

**6.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## SCHEDULE 10

Article 36

### Discharge of Requirements

#### Applications made under Requirement

**1.** Where an application has been made to the relevant planning authority for any agreement or approval required pursuant to a Requirement included in this Order, the relevant planning authority must give notice to the undertaker of their decision including the reasons on the application, within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) such longer period as may be agreed by the undertaker and the relevant planning authority.

<sup>(28)</sup> 1984 c. 12. There are amendments to the Act which are not relevant to this Order.

## Further information

2.—(1) Where an application has been made under paragraph (1) the relevant planning authority shall have the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers further information is needed, and the Requirement does not specify that consultation with a Requirement consultee is required, it must, within 14 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the Requirement indicates that consultation must take place with a Requirement consultee the relevant planning authority must issue the consultation to the Requirement consultee within 5 business days of receipt of the application and must notify the undertaker in writing specifying any further information requested by the Requirement consultee within 3 business days of receipt of such a request and in any event within 21 business days of receipt of the application.

(4) In the event that the relevant planning authority does not give such notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

## Appeals

3.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a Requirement included in this Order or grants it subject to conditions; or
- (b) the relevant planning authority does not give notice of its decision to the undertaker within the time period specified in paragraph (1),

and any appeal must be made within 42 business days following the occurrence of any of the events in sub-paragraphs (a) and (b).

(2) In this Schedule—

“appeal parties” means the relevant planning authority, the Requirement consultee and the undertaker; and

“Requirement consultee” means 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.

## Appeal process

4.—(1) Any appeal under this Schedule shall take place by written representations only. The appeal process shall be as follows—

- (a) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide (“the appeal documentation”) and must on the same day provide copies of the appeal documentation to the relevant planning authority and any Requirement consultee;
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State may appoint a person to determine the appeal (“the appointed person”) and shall notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;

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- (c) the relevant planning authority and the Requirement consultee (if any) must submit written representations to the appointed person in respect of the appeal within 10 business days of the date on which the appeal parties are notified of the appointed person under paragraph (b) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
  - (d) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to paragraph (c); and
  - (e) the appointed person shall make a decision and notify it to the appeal parties, with reasons, as soon as practicable.
- (2) The appointment of the person pursuant to sub-paragraph (1)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he shall, as soon as practicable, notify the appeal parties in writing specifying the further information required, the party from whom the information is sought and the date by which the information is to be submitted.
- (4) Any further information required pursuant to sub-paragraph (3) must be provided to the appointed person and the other appeal parties on or before the date specified by the appointed person. Any written representations concerning matters contained in the further information must be provided to the appointed person and the other appeal parties within 10 business days of that date.
- (5) On an appeal under this paragraph, the appointed person may—
- (a) allow or dismiss the appeal; or
  - (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),
- and may deal with the application as if it had been made to him in the first instance and must state in writing the reasons for any decision.
- (6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits set by the appointed person under this paragraph.
- (7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.
- (8) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.
- (9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 3 to this Order as if it had been given by the relevant planning authority.
- (10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.
- (11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person is to have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replaces it.

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## Fees

5.—(1) Where an application is made to the relevant planning authority for agreement or approval in respect of a Requirement a fee equivalent to the fee for the discharge of a planning condition, if applicable at the time of the application, is to be paid to it.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the period determined under sub-paragraph (1), unless within that period the undertaker agrees in writing that the fee is to be retained by the relevant planning authority and credited in respect of a future application.

## SCHEDULE 11

Article 32

### Removal of important hedgerows

<i>(1) Area</i>	<i>(2) Number of important hedgerow as identified on the trees and hedgerows with the potential to be affected plans</i>
In the County of Carmarthenshire	H1
In the County of Carmarthenshire	H2
In the County of Carmarthenshire	H3
In the County of Carmarthenshire	H4
In the County of Carmarthenshire	H5
In the County of Carmarthenshire	H6
In the County of Carmarthenshire	H7
In the County of Carmarthenshire	H8

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises Western Power Distribution (South Wales) Plc (referred to in this Order as the undertaker) to construct and maintain a 132kV above ground electric line approximately 28.6km long in Carmarthenshire, Wales. The electric line runs from a new substation serving the Brechfa Forest West Wind Farm to the existing Swansea 132kV above ground electric line and includes a section of approximately 3.56km of undergrounding. The Order permits the undertaker to acquire, compulsorily or by agreement, rights in land and to use land for this purpose. A copy of the plans and book of reference referred to in this Order and certified in accordance with article 33 (certification

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of plans) of this Order may be inspected free of charge at Carmarthenshire County Borough Council of County Hall, Carmarthen SA31 1JP.