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**S T A T U T O R Y   I N S T R U M E N T S**

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**2017 No. 766**

**INFRASTRUCTURE PLANNING**

**The Wrexham Gas Fired Generating Station Order 2017**

*Made* - - - -

*18th July 2017*

*Coming into force* - -

*8th August 2017*

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

The application has been examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(b). The single appointed person has submitted a report and recommendation to the Secretary of State under section 83 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(c) 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.

In accordance with section 127 of the Planning Act 2008(d), the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115 and 120 of the 2008 Act, makes the following Order—

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- (a) 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). Transitional provisions are contained in S.I. 2013/1124.
  - (b) S.I. 2010/103, amended by S.I. 2012/635.
  - (c) S.I. 2009/2263. Regulation 3 was amended by S.I. 2012/635 and S.I. 2012/787. S.I. 2009/2263 was revoked by S.I. 2017/572, but continues to apply to this application for development consent by virtue of transitional provisions contained in Regulation 37(2) of that instrument.
  - (d) 2008 c.29, Section 127 was amended by sections 23(1), (2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013, c.27 and by paragraphs 64(1) and (2) of Schedule 13(1) to the Localism Act 2011 (c.20).

## PART 1

### PRELIMINARY

#### **Citation and commencement**

**1.** This Order may be cited as the Wrexham Gas Fired Generating Station Order 2017 and comes into force on 8th August 2017.

#### **Interpretation**

**2.—(1)** In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(**a**);
- “the 1965 Act” means the Compulsory Purchase Act 1965(**b**);
- “the 1980 Act” means the Highways Act 1980(**c**);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(**d**);
- “the 1990 Act” means the Town and Country Planning Act 1990(**e**);
- “the 1991 Act” means the New Roads and Street Works Act 1991(**f**);
- “the 2008 Act” means the Planning Act 2008(**g**);
- “access rights of way plan” means the plan identified in Table 1 of Schedule 2 (documents and plans to be certified) to this Order and certified as the access rights of way plan by the Secretary of State for the purposes of this Order;
- “address” includes any number or address used for the purposes of electronic transmission;
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- “authorised development” means the development described in Schedule 1 (authorised development) to this Order;
- “book of reference” means the document identified in Table 1 of Schedule 2 (documents and plans to be certified) to this Order and certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “carriageway” has the same meaning as in the 1980 Act;
- “commence” unless otherwise provided for means, save for the permitted preliminary works, beginning to carry out any 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 “commencement” and “commenced” and cognate expressions are to be construed accordingly;
- “date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis;
- “design and access statement” means the document identified in Table 1 of Schedule 2 (documents and plans to be certified) to this Order and certified as the design and access statement by the Secretary of State for the purposes of this Order;

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(**a**) 1961 c.33.

(**b**) 1965 c.56.

(**c**) 1980 c.66.

(**d**) 1984 c.27.

(**e**) 1990 c.8.

(**f**) 1991 c.22.

(**g**) 2008 c.29.

“design objectives statement” means the design objectives contained within the summary of design objectives at chapter 2 of the design and access statement and certified by the Secretary of State as the design objectives statement 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 statement” means the documents identified in Table 1 of Schedule 2 (documents and plans to be certified) to this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“exhaust gas emission flue stack” means the exhaust gas emission flue stack excluding any ancillary support structures, sound proof cladding and emissions monitoring platforms;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“gross rated electrical output” means the aggregate of the gross electric power as measured at the terminals of each generator comprised in the generating station in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2016(a);

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

“illustrative foul and surface water drainage strategy” means the document identified in Table 1 of Schedule 2 (documents and plans to be certified) to this Order and certified as the drainage strategy by the Secretary of State for the purposes of this Order;

“illustrative landscape and ecological mitigation master plan” means the document identified in Table 1 of Schedule 2 (documents and plans to be certified) to this Order and certified as the illustrative landscape and ecological mitigation master plan by the Secretary of State for the purposes of this Order;

“the land plans” means the plans identified in Table 1 of Schedule 2 (documents and plans to be certified) to this Order and certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means, in respect of numbered works 1, 3, 4 and 5 inclusive the outer limits of the corresponding numbered area shown on the works plan;

“maintain” includes to the extent assessed in the environmental statement inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development, and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” means National Grid Gas plc (Company No. 02006000) whose registered office is at 1-3 Strand, London WC2N 5EH;

“NRW” means the Natural Resources Body for Wales and any statutory successors from time to time performing the same functions;

“this Order” means the Wrexham Gas Fired Generating Station Order 2017;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans and described in the book of reference;

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

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

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(a) S.I. 2016/1154.

(b) 1981 c.67.

“permitted preliminary works” means any investigation works that may be required pursuant to requirement 5 (ground investigation), requirement 6 (piling) or requirement 8 (archaeology);

“relevant planning authority” means the planning authority for the area in which the authorised development is situated;

“requirements” means those matters set out in Schedule 3 (requirements) to this Order;

“start-up and shut-down” means the periods of 30 minutes before the opening up of construction sites (start-up) and 30 minutes following the end of the working day (shut-down), during which the arrival of workers, changing into and out of work wear, pre-job briefing and leaving the site prior to closing and securing the site take place;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and includes a public communications provider as defined by section 151(1) of the Communications Act 2003(a);

“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 any footpath and “street” includes any part of a street;

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

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means Wrexham Power Limited or any other person who for the time being has the benefit of this Order in accordance with article 7 of this Order;

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

“the works plan” means the plan identified in Table 1 of Schedule 2 (documents and plans to be certified) to this Order and certified as the works plan by the Secretary of State for the purposes of this Order; and

“Wrexham Power Limited” means Wrexham Power Limited (Company No. 06762265) whose registered office is at Park Point, 17 High Street, Longbridge, Birmingham B31 2UQ.

(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 restrictions are references to restrictive covenants over land which interfere with the interests or rights of another and are for the benefit of land over which rights are created and acquired under this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plan and access rights of way plan are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plan and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in Schedule 1 (authorised development) and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1G inclusive, and a reference to “Work No.2” or “numbered work 2” means numbered works 2A and 2B inclusive.

(5) The expression “includes” is to be construed without limitation.

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

(7) References to any statutory body include that body’s successor bodies as from time to time have jurisdiction over the authorised development.

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(a) 2003 c.21.

## PART 2

### PRINCIPAL POWERS

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

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

(2) Subject to paragraph (3), each numbered work must be situated within the numbered area shown on the works plan.

(3) In constructing each numbered work, the undertaker may construct each numbered work anywhere within the corresponding numbered area shown on the works plan up to the limits of deviation.

#### **Maintenance of authorised development**

**4.**—(1) 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.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

#### **Operation of authorised development**

**5.**—(1) The undertaker is authorised to operate and use the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required from time to time to authorise the operation of a generating station.

#### **Benefit of this Order**

**6.** Subject to article 7 (consent to transfer benefit of this Order), the provisions of this Order have effect solely for the benefit of the undertaker.

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

**7.**—(1) Subject to paragraph (4), the undertaker may—

(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing 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 (including any of the numbered works) and such related statutory rights as may be agreed in writing by the undertaker and the lessee.

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

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

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989(a) or section 7 of the Gas Act 1986(b); or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted;
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
- (f) a copy of the document effecting the transfer or grant signed by the Undertaker and the person to whom the benefit of the powers will be transferred or granted.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

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

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

**8.—(1)** Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(c) (summary proceedings by persons aggrieved by statutory nuisances) 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 the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(d);

- (a) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to the section that are not relevant to this Order.
- (b) 1986 c. 44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to the section that are not relevant to this Order.
- (c) 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.
- (d) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3) of the Electricity Act 1989 (c.29); Sections 61 and 65 were amended by section 133 and Schedule 7 to the

- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do 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.

## PART 3

### STREETS

#### **Power to alter layout, etc. of streets**

**9.**—(1) The undertaker may for the purposes of the authorised development permanently alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; or
- (b) make and maintain passing place(s).

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) If a street authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent under paragraph (4) (or such longer period as may be agreed with the undertaker in writing), that street authority is deemed to have granted consent.

(6) Paragraphs (3), (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

#### **Street works**

**10.**—(1) The undertaker may, for the purposes of the authorised development or any other development necessary for the authorised development that takes place within the Order land, enter on so much of any of the streets specified in Schedule 5 (streets subject to street works) as is within the Order land and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street or change its position; and

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Building Act 1984 (c.55), section 120 and Schedule 24 to the Environment Act 1995 (c.25) and section 162 and Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.

- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).
- (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) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### **Temporary prohibition or restriction of use of streets**

- 11.**—(1) The undertaker, during and for the purposes of carrying out the authorised development or any other development necessary for the authorised development that takes place within the Order land, may temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—
- (a) divert the traffic from the street; and
  - (b) subject to paragraph (3), prevent all persons from passing along the street.
- (2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order land as a temporary working site.
- (3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.
- (4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets specified in columns (1) and (2) of Schedule 6 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.
- (5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—
- (a) any street specified in paragraph (4) without first consulting the street authority; or
  - (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.
- (6) If a street authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent under paragraph (5)(b) (or such longer period as may be agreed with the undertaker in writing) that street authority is deemed to have granted consent.

### **Access to works**

- 12.** The undertaker may, for the purposes of the authorised development or any other development necessary for the authorised development that takes place within the Order land—
- (a) form and layout the permanent means of access, or improve existing means of access, in the locations specified in Schedule 4 (streets subject to permanent alteration of layout); and
  - (b) with the approval of the relevant planning authority after consultation with the highway authority, form and layout such other means of access or improve the existing means of access, at such locations within the Order land as the undertaker reasonably requires for the purposes of the authorised development or any other development necessary for the authorised development that takes place within the Order land.

### **Agreements with street authorities**

- 13.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street;

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

### **Traffic Regulation**

**14.**—(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 the construction of the authorised development or any other development necessary for the authorised development that takes place within the Order land, 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; and
- (b) 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 under paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do 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 11 or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

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 (road traffic contraventions subject to civil enforcement)(a).

(4) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

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

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(a) 2004 c.18. There are amendments to this Act not relevant to this Order.

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

**15.**—(1) 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 or any other development necessary for the authorised development that takes place within the Order land and for that purpose may lay down, take up and alter pipes and may, on any land within the Order land, 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) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

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

(4) The undertaker must not make any opening into any public sewer or drain except—

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

(5) 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.

(6) This article does not authorise any groundwater activity or water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(b).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to NRW, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park 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(d) have the same meaning as in that Act.

#### Authority to survey and investigate the land

**16.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order land or on any land which may be affected by the authorised development or any other development necessary for the authorised development that takes place within the Order land 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;

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(a) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c.37).

(b) S.I. 2016/1154.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

(d) 1991 c.57 as amended by S.I. 2009/3104.

- (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.

- (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 on to 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 must not be unreasonably withheld.

(5) If either the highway authority or street authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent (or such longer period as may be agreed with the undertaker in writing)—

- (a) under paragraph (4)(a) in the case of the highway authority; or
- (b) under paragraph (4)(b) in the case of the street authority,

that authority is deemed to have granted consent.

(6) 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 (determination of questions of disputed compensation) of the 1961 Act.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

**17.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) This article is subject to article 18 (compulsory acquisition of rights etc), article 22 (acquisition of subsoil only) and article 26 (temporary use of land for carrying out the authorised development).

#### **Compulsory acquisition of rights etc**

**18.**—(1) The undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights and impose the restrictions described in the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act (provisions as to divided land) where the undertaker creates or acquires a right over land or imposes a restriction under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in

relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restriction.

(4) In any case where the creation and acquisition of new rights or the imposition of a restriction under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictions to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Subject to the modifications set out in Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) 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.

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

**19.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) applies as if this Order were a compulsory purchase order.

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

(3) Section 5 (earliest date for execution of declaration) is omitted.

(4) Section 5A (time limit for general vesting declaration) is omitted.

(5) In section 5B (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 20 of the Wrexham Gas Fired Generating Station Order 2017”.

(6) 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.

(7) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 must be construed as references to that Act as applied by section 125 of the 2008 Act (as modified by article 23 (application of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

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

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

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

(b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

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(a) 1981 c.66.

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) must cease 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.

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

**21.**—(1) The carrying out or use of the authorised development or any other development necessary for the authorised development that takes place within the Order land and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(1) 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 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 use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development 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.

(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).

### **Acquisition of subsoil only**

**22.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 17 (compulsory acquisition of land) and paragraph (1) of article 18 (compulsory acquisition of rights etc) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 23 (application of Part 1 of the Compulsory Purchase Act 1965) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Application of Part 1 of the Compulsory Purchase Act 1965**

**23.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period specified in article 20 of the Wrexham Gas Fired Generating Station Order 2017”.

(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 20 of the Wrexham Gas Fired Generating Station Order 2017”.

(4) In Schedule 2A—

- (a) omit paragraphs 1(2) and 14(2); and
- (b) at the end insert—

## “PART 4 INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) of the Wrexham Gas Fired Generating Station Order 2017.”.

### **Private rights**

**24.**—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land 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 (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right 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 (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights or restrictions.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for so long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

(6) 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 28 (statutory undertakers) applies.

(7) Paragraphs (1), (4) and (5) is to have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land;

- (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's temporary possession of it,
- that any or all of those paragraphs are not to 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 restriction in question is vested, belongs or benefits.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right or restriction is vested, belongs or benefits; 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.

(9) References in this article to private rights and restrictions over land includes any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

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

**25.**—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order land as may be required for the purposes of the authorised development or any other development necessary for the authorised development that takes place within the Order land and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development or any other development necessary for the authorised development that takes place within the Order land.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker 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) The undertaker must repair and make good at its own expense and to the reasonable satisfaction of the street authority any damage caused to a street or to any bridge apparatus, highway structure or street furniture in the street belonging to the street authority by virtue of its occupation and appropriation of the subsoil of, or airspace over, the street under this article.

(5) Subject to paragraph (6), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Compensation is not payable under paragraph (5) 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 for carrying out the authorised development**

**26.**—(1) The undertaker may in connection with the carrying out of the authorised development or any other development necessary for the authorised development that takes place within the Order land—

- (a) enter on and take possession of—

- (i) so much of the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; or
- (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);
- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 8 (land of which temporary possession may be taken), 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 specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the authorised development; 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 final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker is not to be required to replace a building or any debris removed under this article.

(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 provisions of this article.

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

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(9) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in part 1 of the book of reference under article 18 (compulsory acquisition of rights etc); or
- (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 22 (acquisition of subsoil only) or article 25 (rights under or over streets).

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

(11) 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).

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8 (land of which temporary possession may be taken).

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

**27.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on 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; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 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.

(4) 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.

(5) 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.

(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, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be 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) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning.

### **Statutory Undertakers**

**28.** Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;

- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land; and
- (c) create and acquire compulsorily the rights and/or impose restrictions over any Order land belonging to statutory undertakers.

#### **Apparatus and rights of statutory undertakers in streets**

**29.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (power to alter layout, etc. of streets), or article 11 (temporary prohibition or restriction of use of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

#### **Recovery of costs of new connection**

**30.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 28 (statutory undertakers) any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 29 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

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

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

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

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

**31.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order land or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any other development necessary for the authorised development that takes place within the Order land or any apparatus used in connection with the authorised development or any other development necessary for the authorised development that takes place within the Order land; or

(b) from constituting a danger to persons using the authorised development or any other development necessary for the authorised development that takes place within the Order land.

(2) In carrying out any activity authorised by paragraph (1) and paragraph (4), 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 or any other development necessary for the authorised development that takes place within the Order land subject to paragraph (2), remove any hedgerows within the Order land if it reasonably believes it to be necessary to do so for the purposes of carrying out, maintaining or using the authorised development or any other development necessary for the authorised development that takes place within the Order land.

(5) In this article "hedgerow" has the same meaning as in the Environment Act 1995.

### **Application of landlord and tenant law**

**32.—(1)** This article applies to—

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

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

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

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

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

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

**33.** 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 not being operational land).

### **Protective provisions**

**34.** Schedule 9 (protective provisions) has effect.

### **Certification of plans etc.**

**35.—(1)** The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in Table 1 of Schedule 2

(documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

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

### Service of notices

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

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

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(a) 1978 c.30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to 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 seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

### **Procedure in relation to certain approvals**

**37.**—(1) Where an application is made to or a request is made of the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 9 (protective provisions) for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements but including the protective provisions contained in Schedule 9), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 10 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements in Schedule 3 (requirements).

(3) Save for applications made pursuant to Schedule 10 (procedure for discharge of requirements), if, within eight weeks after the application or request has been submitted to an authority, beneficiary of protective provisions or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed with the undertaker in writing) it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(4) The procedure set out in paragraph 3(1) of Schedule 10 (procedure for discharge of requirements) has effect in relation to any refusal by an authority, beneficiary of protective provisions, or an owner as referred to in paragraph (1) of this article to any consent, agreement or approval required under this Order, including such as may be required pursuant to the protective provisions contained within Schedule 9 (protective provisions).

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (3).

### **Arbitration**

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

### **Funding**

**39.**—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State.

(2) The provisions are—

- (a) article 17 (compulsory acquisition of land);
- (b) article 18 (compulsory acquisition of rights etc);

- (c) article 22 (acquisition of subsoil only);
- (d) article 24 (private rights);
- (e) article 25 (rights under or over streets);
- (f) article 26 (temporary use of land for carrying out the authorised development);
- (g) article 27 (temporary use of land for maintaining the authorised development); and
- (h) article 28 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

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

18th July 2017

# SCHEDULES

## SCHEDULE 1 AUTHORISED DEVELOPMENT

Articles 2 and 3

In the County Borough of Wrexham—

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act comprising—

**Work No. 1A** development comprising—

- (a) one gas turbine building with up to two gas turbines, and one steam turbine building with one steam turbine, each connected to its own generator with a gross rated electrical output of up to 299 MWe;
- (b) up to two exhaust gas emission flue stacks;
- (c) up to two Heat Recovery Steam Generator buildings with up to two Heat Recovery Steam Generators (HRSG's);
- (d) air cooled condenser; and
- (e) switchgear room.

**Work No. 1B** development comprising—

- (a) a workshop;
- (b) telemetry apparatus;
- (c) auxiliary distilled fuel oil generator; and
- (d) a natural gas pressure regulating installation (PRI) (also known as a gas receiving station and gas treatment compound) within the power station complex containing—
  - (i) full bore 400mm nominal bore manually and remotely actuated isolation valves;
  - (ii) bypass valves, slam-shut valves, creep-relief valves and pressure reduction valves;
  - (iii) gas filters;
  - (iv) liquid separator;
  - (v) up to two 100% gas heaters (bath water type);
  - (vi) gas meter(s);
  - (vii) non-return and relief valves;
  - (viii) control and instrument kiosk;
  - (ix) electricity supply kiosk;
  - (x) a section of isolated pipe suitable for receiving a pressure inspection gauge (PIG) (also known as PIG launching/receiving facility); and
  - (xi) high pressure steel pipeline with a nominal bore of 400mm.

**Work No. 1C** development comprising—

- (a) a water treatment system;
- (b) a raw/fire water storage tank and up to two water storage tanks; and
- (c) an above ground foul water pump station.

**Work No. 1D** development comprising—

- (a) a 132kV switchyard containing plant required to manage the transmission of electricity into the distribution network; and

- (b) up to three transformer compounds with up to three transformers.

**Work No. 1E** development comprising an administration/control building.

**Work No. 1F** development comprising a heat network interface building.

**Work No. 1G** development comprising—

- (a) security infrastructure, including cameras, perimeter fencing, fencing, gate and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns and lights;
- (c) internal roadways, car parking, pedestrian network, cycle parking and hardstanding;
- (d) foul, surface water and trade effluent drainage (including underground pipework and access chambers);
- (e) waste management infrastructure;
- (f) electricity, water, wastewater and telecommunications and other services;
- (g) site preparation works including earthworks and enabling works and tree removal;
- (h) high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;
- (i) part of underground gas pipeline connection;
- (j) other ancillary equipment; and
- (k) construction compound.

**Work No. 2A** development comprising temporary construction laydown and car parking area comprising—

- (a) fencing;
- (b) tree removal;
- (c) lighting infrastructure including lighting columns and lighting;
- (d) concrete batching plant;
- (e) signage;
- (f) security kiosk;
- (g) weighbridge;
- (h) staff welfare cabins; and
- (i) site preparation works including earthworks and enabling works and tree removal.

**Work No. 2B** development comprising—

- (a) creation of a construction laydown and car parking area comprising—
  - (i) fencing;
  - (ii) tree removal;
  - (iii) lighting infrastructure including lighting columns and lighting;
  - (iv) concrete batching plant;
  - (v) signage;
  - (vi) security kiosk;
  - (vii) weighbridge;
  - (viii) staff welfare cabins; and
  - (ix) site preparation works including earthworks and enabling works and tree removal; and
- (b) an operational and maintenance laydown area comprising—
  - (i) hardstanding;

- (ii) lighting columns and lights; and
- (iii) fencing.

**Work No. 3** development comprising—

- (a) surface water drainage comprising—
  - (i) underground pipework;
  - (ii) access chambers; and
  - (iii) outfall to Redwither Brook;
- (b) tree removal;
- (c) landscaping and ecological mitigation; and
- (d) construction and maintenance of up to three surface water retention pond(s) providing a total minimum capacity of 2,085m<sup>3</sup> and vortex flow control to limit the discharge rate to a maximum of 12.2 litres per second.

**Work No. 4** development comprising landscaping, bunding, fencing, boundary treatments, tree planting, habitat creation and ecological mitigation.

**Work No. 5** development comprising the alteration of the existing access road to Kingmoor Park, off the east side of Bryn Lane including levelling, regrading and resurfacing,

and such other ancillary buildings, structures, works or operations as are integral to and part of the construction, operation and maintenance of the works in this Schedule 1 but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2

### DOCUMENTS AND PLANS TO BE CERTIFIED

Articles 2 and 35

**Table 1**

<i>(1) Document name</i>	<i>(2) Document reference</i>	<i>(3) Revision number</i>	<i>(4) Date</i>
access rights of way plan	2.4	2	September 2016
book of reference	4.3	3	January 2017
design objectives statement, contained within—			
design and access statement	5.3	0	March 2016
environmental statement, comprising—			
Volume 1: Non-Technical Summary to Environmental Statement (English)	6.1	0	March 2016
Volume 1: Non-Technical Summary to Environmental Statement (Welsh)	6.1	0	March 2016
Volume 2: Environmental Statement, Main Statement	6.2	0	March 2016
Volume 3: Environmental Statement Figures	6.3	0	March 2016
Volume 4: Environmental Statement Appendices, amended by:	6.4	0	March 2016
Appendix 14.3: Drainage Strategy	6.4.9	1	November 2016
Appendix 19.1: Draft Construction Environmental Management Plan	6.4.11	2	November 2016
Addendum to Environmental Statement Cumulative Effects Assessment - Electrical Connection	11.8	0	September 2016
illustrative landscape and	2.9.7 (sheet 1 of 7)	0	March 2016

ecological mitigation master plan			
land plans	2.2	5	January 2017
works plan	2.3	0	March 2016

## SCHEDULE 3

### REQUIREMENTS

Articles 2 and 3

#### **Time limits**

1. The authorised development must be commenced within five years of the date that this Order is made.

#### **Detailed design approval**

- 2.—(1) The authorised development must be carried out in accordance with the approved plans, inclusive of any limits of deviation, bearing the references listed below and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any requirement (as the same may be amended by approval of the relevant planning authority pursuant to requirement 15(1))—

**Table 2**

works plan	Submission document reference number 2.3
access rights of way plan	Submission document reference number 2.4

2. (2) The authorised development must not exceed the maximum parameters specified in Table 3 below (as the same may be amended by approval of the relevant planning authority under requirement 15(1))—

**Table 3**

(1) <i>Element of authorised development</i>	(2) <i>Maximum height (metres) above a site level of 30 metres AOD</i>	(3) <i>Maximum width (metres)</i>	(4) <i>Maximum length (metres)</i>	(5) <i>Other parameters</i>
Gas turbine building (part of numbered work 1A)	25 metres	45 metres	60 metres	-
Each Heat Recovery Steam Generator Building (part of numbered work 1A)	35 metres	13 metres	25 metres	-
Each exhaust gas emission flue stack (part of numbered work 1A)	50 metres	-	-	Maximum diameter 6.5 metres

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres) above a site level of 30 metres AOD</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Steam turbine building (part of numbered work 1A)	21 metres	26 metres	45 metres	-
Air cooled condenser (part of numbered work 1A)	26 metres	48 metres	48 metres	-
Switchgear room (part of numbered work 1D)	5 metres	10 metres	15 metres	-
Raw/fire water storage tank (part of numbered work 1C)	20 metres	-	-	Maximum diameter 15 metres
Each water storage tank (part of numbered work 1C)	20 metres	-	-	Maximum diameter 5 metres
Water treatment system (part of numbered work 1C)	10 metres	25 metres	20 metres	-
Workshop (part of numbered work 1B)	10 metres	20 metres	30 metres	-
Natural gas pressure regulating installation (PRI) (part of numbered work 1B)	5 metres	25 metres	35 metres	-
Administration/control building (numbered work 1E)	10 metres	10 metres	20 metres	-

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres) above a site level of 30 metres AOD</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Heat network interface building (numbered work 1F)	15 metres	25 metres	45 metres	-
The first transformer compound (part of numbered work 1D)	6 metres	15 metres	15 metres	-
The second and third transformer compounds (part of numbered work 1D)	6 metres	10 metres	15 metres	-
132kV switchyard (part of work numbered 1D)	10 metres	42 metres	73 metres	-
Perimeter fencing (part of numbered work 1G)	2.5 metres	-	-	-

(3) To the extent that design objectives relating to any numbered work are set out in the design objectives statement, that numbered work must be designed substantially in accordance with the relevant design objective set out therein.

(4) Numbered work 1 and, in respect of the security kiosk and weighbridge only, numbered work 2B may not commence until written details of the following have been submitted to and approved by the relevant planning authority—

- (a) the siting, design, external appearance, dimensions and floor levels of all permanent buildings and structures; and
- (b) the colour, materials and surface finishes of all permanent buildings and structures.

(5) The details to be submitted for approval under sub-paragraph (4) must include appropriately scaled plans and sectional drawings.

#### **Provision of and implementation and maintenance of landscaping and ecological mitigation**

3.—(1) No authorised development may commence until a written landscaping and ecological mitigation scheme has been submitted to and approved by the relevant planning authority. The landscaping and ecological mitigation scheme must be substantially in accordance with the illustrative landscape and ecological mitigation master plan and must include details of all proposed hard and soft landscaping and ecological mitigation works, including—

- (a) location, number, species, size and planting density of any proposed planting;

- (b) site restoration cultivation, importing of materials including topsoil and subsoil handling and storage in accordance with BS 3882:2015 and other landscape reinstatement operations in accordance with BS 4428:1989 Code of Practice for general Landscape Operations, and the earthworks specification to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) an arboricultural method statement including details of existing trees and tree groups identified for retention, management and reinforcement with the type and extent of protection to be in accordance with BS 5837: 2012;
- (e) implementation timetables for all landscaping works;
- (f) surface water attenuation ponds;
- (g) the locations of low fertility (where applicable) for invertebrates;
- (h) butterfly habitat planting; and
- (i) the ecological monitoring and management included in the environmental statement.

(2) The relevant planning authority must consult NRW before determining the landscaping and ecological mitigation scheme under sub-paragraph (1). The procedure set out in paragraph 1 of Schedule 10 (procedure for discharge of requirements) shall apply.

(3) The landscaping and ecological mitigation works must be carried out in accordance with the approved landscaping and ecological mitigation scheme.

(4) The landscaping and ecological mitigation works must be carried out in accordance with implementation timetables approved under sub-paragraph (1).

(5) Any tree or shrub planted as part of the approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

(6) The landscaping and ecological mitigation works must be managed and maintained throughout the life of the authorised development to ensure the long term adequacy of the approved landscaping and ecological mitigation scheme.

### **Construction and Environment Management Plan**

4.—(1) No authorised development may commence until a construction and environment management plan has been submitted to and approved by the relevant planning authority. The construction and environment management plan must be substantially in accordance with the draft construction and environment management plan forming part of the environmental statement insofar as it relates to the relevant numbered work and must include the following—

- (a) the mechanism for ensuring that all relevant environmental controls and mitigation are incorporated into a construction method statement;
- (b) confirmation that no explosive blasting will be carried out during any demolition;
- (c) environmental objectives and targets;
- (d) environmental monitoring;
- (e) roles and responsibilities;
- (f) means of communication, record keeping, reporting, auditing and review;
- (g) complaints procedures;
- (h) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, lighting, noise and vibration);
- (i) details of construction lighting to protect potential foraging/commuting features;
- (j) habitats protection measures, including fencing, protection zones for retained trees and bat roosts and means of escape for badgers and other small mammals;
- (k) measures to minimise the spread of invasive species;

- (l) a site waste management plan;
- (m) surface and ground water protection measures (including bunding potential contaminate sources);
- (n) a construction drainage strategy;
- (o) a methodology for using harvested water where possible;
- (p) ecology, landscape and visual impact mitigation to include details of any trees or hedgerows to be removed during construction; and
- (q) a protocol in the event that unexpected contaminated land is identified during ground investigation or construction.

(2) The relevant planning authority must consult NRW before determining the construction environment management plan under sub-paragraph (1). The procedure set out in paragraph 1 of Schedule 10 (procedure for discharge of requirements) shall apply.

(3) The construction works must be undertaken in accordance with the approved construction environment management plan.

(4) The undertaker may submit for approval by the relevant planning authority a construction and environment management plan for each of numbered work 1, numbered work 2, numbered work 3, numbered work 4, and numbered work 5 individually, and, in such a case, only those parts of the authorised development forming the numbered work the subject of the construction and environment management plan may be commenced following the approval of such a construction and environment management plan.

### **Ground investigation**

**5.**—(1) Each of numbered works 1 to 5 must not be commenced until, for that numbered work, a scheme (which may be included in the construction environment management plan) to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment has been submitted to and approved in writing by the relevant planning authority.

(2) The relevant planning authority must consult NRW before determining the scheme under sub-paragraph (1). The procedure set out in paragraph 1 of Schedule 10 (procedure for discharge of requirements) shall apply.

(3) The scheme must include an assessment report, prepared by a specialist consultant, to identify the likely extent of any contamination and any remedial measures that may be required to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(4) Any required remediation must be carried out in accordance with the approved scheme.

### **Piling**

**6.**—(1) No piling may commence until a piling strategy has been submitted to and approved by the relevant planning authority, such strategy to include a piling risk assessment, the results of such assessment and the piling techniques to be used in carrying out the authorised development.

(2) Piling must be carried out in accordance with the approved strategy.

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

**7.**—(1) No authorised development may commence until details of the proposed fencing and other means of enclosure for the authorised development have been submitted to and approved by the relevant planning authority.

(2) Fencing and other means of enclosure must be carried out in accordance with the approved details.

(3) Any construction sites must remain securely fenced at all times during construction of the authorised development.

(4) The undertaker may submit for approval by the relevant planning authority details of the proposed means of enclosure for each of numbered work 1G, numbered work 2A and numbered work 2B individually and, in such a case, only those parts of the authorised development forming the numbered work the subject of the details of the proposed means of enclosure may be commenced following the approval of such details.

## **Archaeology**

**8.—(1)** No authorised development may commence until a written scheme setting out the methodology for the investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority.

(2) The scheme must provide for—

- (a) the carrying out of a geophysical survey of greenfield areas within the Order land;
- (b) a targeted archaeological investigation of any anomalies that may be identified by the geophysical surveys;
- (c) the identification of areas where a watching brief is required; and
- (d) the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) The scheme approved under sub-paragraph (1) must be carried out by a suitably qualified person or body.

(4) Any watching brief must be carried out in accordance with the approved scheme.

(5) The undertaker may submit for approval by the relevant planning authority a scheme for each of numbered work 1, numbered work 2, numbered work 3, numbered work 4, and numbered work 5 individually, and, in such a case, only those parts of the authorised development forming the numbered work the subject of the scheme may be commenced following the approval of such a scheme.

## **Construction traffic management plan**

**9.—(1)** No authorised development may commence until a construction traffic management plan has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The construction traffic management plan must be substantially in accordance with the draft construction traffic management plan forming part of the environmental statement insofar as it relates to the relevant numbered work and must include the following—

- (a) details of a plan to encourage car sharing between construction workers travelling to the site, including details encouraging the use of the routes as set out in the construction vehicle routeing plans referred to in sub-paragraph (b);
- (b) construction vehicle routing plans;
- (c) details of a HGV vehicle booking management system;
- (d) site access plans and 24 hour access arrangements;
- (e) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (f) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads together with the staggering of construction workers start and finish times;
- (g) pre-notification of deliveries involving abnormal indivisible loads and details of where an appropriately authorised vehicle escort would be required;
- (h) proposals for temporary warning signs and bamsmen and appropriate escort details (including for horse riders, cyclists and users of the road network and public rights of way);
- (i) measures to ensure the protection of users of any footpath within the Order limits which may be affected by the construction of the authorised development (including details of

any proposed temporary closures and diversions and notification thereof where necessary);

- (j) details of the on-site parking arrangements for construction plant and vehicles; and
- (k) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during construction of the authorised development.

(2) The construction traffic management plan must be implemented as approved.

(3) The undertaker may submit for approval by the relevant planning authority a construction traffic management plan for each of numbered work 1, numbered work 2, numbered work 3, numbered work 4, and numbered work 5 individually, and, in such a case, only those parts of the authorised development forming the numbered work the subject of the construction traffic management plan may be commenced following the approval of such a construction traffic management plan.

(4) During the operation of the generating station no abnormal indivisible loads may be transported into or out of the site without the prior written approval of the relevant planning authority in consultation the relevant highways authority.

(5) In this requirement “abnormal indivisible load” has the same meaning as in the Road Vehicles (Authorisation of Special Types) (General) Order 2003(a).

### **Travel plan during operational phase**

**10.**—(1) Prior to the date of final commissioning a written operational travel plan must be submitted to and approved by the relevant planning authority. Such operational travel plan to include—

- (a) objectives and targets; and
- (b) measures and initiatives to promote sustainable travel.

(2) The operational travel plan must be carried out as approved.

### **Construction hours**

**11.**—(1) Construction work for the authorised development must not take place outside the hours of—

- (a) 07:00 to 19:00 on Monday to Friday; and
- (b) 07:00 to 13:00 on Saturdays and public holidays.

(2) Sub-paragraph (1) does not prevent construction works being carried out on any Sunday or outside the hours set out in sub-paragraph (1) with the prior written approval of the relevant planning authority.

(3) Nothing in sub-paragraph (1) precludes a start-up period from 06:30 to 07:00 and a shut-down period from 19:00 to 19:30 on weekdays (excluding public holidays) and a start-up period from 06:30 to 07:00 and a shut-down period from 13:00 to 13:30 on Saturdays and public holidays.

### **Foul and surface water drainage**

**12.**—(1) Numbered works 1, 2 and 3 must not commence until written details of the surface water drainage system and separate written details of the foul water drainage system for the operation of the authorised development have been submitted to and approved by the relevant planning authority. The submitted details must be substantially in accordance with the illustrative foul and surface water drainage strategy.

(2) The relevant planning authority must consult NRW and Dŵr Cymru Welsh Water before determining the details of the surface water drainage system and the foul water drainage system

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(a) S.I. 2003/1998.

under sub-paragraph (1). The procedure set out in paragraph 1 of Schedule 10 (procedure for discharge of requirements) applies.

(3) The surface water drainage system and the foul water drainage system for the authorised development must be constructed and maintained in accordance with the approved details.

### **Artificial lighting**

**13.**—(1) No generation of electricity on a commercial basis is to take place until written details of the control of artificial lighting during maintenance and operation of the authorised development have been submitted to and approved by the relevant planning authority, such details to include the timetable for implementation of the artificial lighting and measures to keep external lighting to the minimum necessary for operational safety and security reasons, incorporating cut-offs to reduce light pollution.

(2) The relevant planning authority must consult NRW before determining the details of artificial lighting under sub-paragraph (1). The procedure set out in paragraph 1 of Schedule 10 (procedure for discharge of requirements) shall apply.

(3) The artificial lighting for the authorised development must be implemented in accordance with the approved details.

(4) The undertaker may submit for approval by the relevant planning authority written details of the artificial lighting during maintenance and operation of the authorised development for each of numbered work 1G and numbered work 2B individually forming the numbered work the subject of the written details of the control of artificial lighting and, in such a case, only those parts of the authorised development may be commenced following the approval of such details.

### **Local economic benefit**

**14.**—(1) No part of the authorised development must commence until a scheme for the promotion of local economic benefit from the authorised development in the County Borough of Wrexham has been submitted to and approved by the relevant planning authority. Such scheme must include—

- (a) a commitment on the undertaker to invite to tender companies with addresses in the County Borough of Wrexham as the relevant planning authority may notify to the undertaker in writing;
- (b) a methodology for the use of local people and local businesses, where appropriate, in relation to the construction of the authorised development; and
- (c) a strategy for the provision of training opportunities for local companies (who are successful under sub-paragraph (a)) or local people who are employed to work on the authorised development under sub-paragraph (b).

(2) The authorised development must be carried out in accordance with the scheme approved under sub-paragraph (1).

### **Amendments to approved details**

**15.**—(1) Subject to sub-paragraph (2), the undertaker may submit to the relevant planning authority for approval any amendments to any plans, drawings, documents, details, schemes, statements or strategies which require approval by the relevant planning authority pursuant to any requirement (the “Approved Plans, Details or Schemes”). Following any such approval by the relevant planning authority the Approved Plans, Details or Schemes are to be taken to include the amendments approved pursuant to this sub-paragraph (1).

(2) Sub-paragraph (1) does not apply to the works plan or the access rights of way plan.

(3) Approval under sub-paragraph (1) and requirement 2(2) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought is unlikely to give rise to any materially new or materially different

environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

### **Combined heat and power**

**16.**—(1) Prior to the date of final commissioning, a review of potential opportunities for the use of heat from the authorised development must be submitted to and approved by the relevant planning authority.

(2) The review must provide for the on-going monitoring and full exploration of potential opportunities to use heat from the authorised development and for the provision of subsequent reviews of such opportunities as necessary.

(3) Where viable opportunities for the use of heat are identified, a scheme for the provision of the necessary plant and pipework to the boundary of numbered work 1 must be submitted to and approved by the relevant planning authority; any plant and pipework installed up to the boundary of numbered work 1 to enable the use of heat must be installed in accordance with the agreed details.

(4) The undertaker must carry out the on-going monitoring, exploration of potential opportunities to use heat from the authorised development and any subsequent reviews in accordance with the review of potential opportunities approved under sub-paragraph (1).

### **Decommissioning strategy**

**17.**—(1) Subject to obtaining the necessary consents and unless otherwise agreed with the relevant planning authority, within twenty four months of the Order land ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis), a scheme for the demolition and removal of numbered work 1 must be submitted to the relevant planning authority.

(2) The scheme submitted to the relevant planning authority for approval under sub-paragraph (1) must be substantially in accordance with the construction and environment management plan approved under paragraph 4(1) of this Schedule 3.

(3) The demolition and removal of numbered work 1 must be implemented in accordance with the approved scheme.

(4) On the one year anniversary of the Order land ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis) the undertaker must notify the relevant planning authority of the same.

### **Requirements for written approval, etc.**

**18.**—(1) Where under any of the above requirements the approval or agreement of the relevant planning authority or any other party is required, that approval or agreement must be provided in writing and must not be unreasonably withheld or delayed.

(2) Where under any of the above requirements a written scheme is required it must be accompanied by such illustrations as are necessary and appropriate in the circumstances.

### **Date of final commissioning and cessation**

**19.**—(1) The undertaker must notify the relevant planning authority of the date of final commissioning as soon as reasonably practicable and in any event within three months after the occurrence of that date.

(2) The undertaker must notify the relevant planning authority of the date the authorised development permanently ceases to generate power on a commercial basis as soon as reasonably practicable and in any event within three months after the occurrence of that date.

## SCHEDULE 4

Article 9

### STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

**Table 4**

<i>(1) Area</i>	<i>(2) Street subject to alteration of layout</i>	<i>(3) Description of alteration</i>
In the County Borough of Wrexham	Kingmoor Park Access Road	From line A-B to points C and D shown on the access and rights of way plan improvements to the existing access (the bellmouth of the Kingmoor Park Access Road as shown at line A-B on the access rights of way plan), resurfacing and regrading of the Kingmoor Park Access Road

## SCHEDULE 5

### STREETS SUBJECT TO STREET WORKS

Article 10

**Table 5**

<i>(1) Area</i>	<i>(2) Streets subject to street works</i>	<i>(3) Description of street works</i>
In the County Borough of Wrexham	Kingmoor Park Access Road	Street works to upgrade the existing access (the bellmouth of the Kingmoor Park Access Road as shown between line A-B on the access rights of way plan) and to upgrade and widen the Kingmoor Park Access Road between line A-B and points C and D on the access rights of way plan
In the County Borough of Wrexham	Oak Road	Street works to horizontally drill a gas pipeline with a nominal bore of 400mm underneath Oak Road
In the County Borough of Wrexham	Maelor Gas Works Access Road and Southern Access Track	Street works to emplace a gas pipeline with a nominal bore of 400mm underneath the Maelor Gas Works Access Road and Southern Access Track

## SCHEDULE 6

Article 11

### TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

**Table 6**

<i>(1) Area</i>	<i>(2) Street subject to temporary prohibition or restriction of use</i>	<i>(3) Extent of temporary prohibition or restriction of use of streets</i>
In the County Borough of Wrexham	Kingmoor Park Access Road	<p><b>Prohibition/Restriction:</b> Between lines A-B and point D on the access rights of way plan being approximately 111 metres</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of no more than half the width of the Kingmoor Park Access Road at any time in order to carry out numbered works 1-5</p>
In the County Borough of Wrexham	Oak Road	<p><b>Prohibition/Restriction:</b> Between lines E-F and G-H on the access rights of way plan being approximately 111 metres</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of no more than half the width of Oak Road at any time in order to facilitate development necessary for the authorised development that takes place within the Order land</p>

<i>(1) Area</i>	<i>(2) Street subject to temporary prohibition or restriction of use</i>	<i>(3) Extent of temporary prohibition or restriction of use of streets</i>
In the County Borough of Wrexham	Maelor Gas Works Access Road and Southern Access Track	<p><b>Prohibition/Restriction:</b> Between points K and J and lines L-M on the access rights of way plan being approximately 365 metres</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of no more than half the width of the Maelor Gas Works Access Road and Southern Access Track at any time in order to facilitate development necessary for the authorised development that takes place within the Order land</p>
In the County Borough of Wrexham	Public Right of Way known as ISY/18	<p><b>Prohibition/Restriction:</b> Between lines P-Q on the access rights of way plan being approximately 64m</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of the Public Right of Way at any time during the construction of numbered works 1-5 as is required to facilitate or is incidental to the carrying out of the authorised development</p>
In the County Borough of Wrexham	Public Right of Way known as SES/25	<p><b>Prohibition/Restriction:</b> Between lines R-S on the access rights of way plan being approximately 103m</p> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure of the Public Right of Way at any time during the construction of numbered works 1-5 as is required to facilitate or is incidental to the carrying out of the authorised development</p>

## SCHEDULE 7

Article 18

### MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIONS

#### *Compensation enactments*

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land 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 or the imposition of a restriction as they apply as respects compensation on the compulsory purchase of land and interests in land.

**2.**—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has 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 is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

**3.**—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A (5A) (relevant valuation date) of the 1961 Act, for (a) and (b) substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 9 of Schedule 5 to the Wrexham Gas Fired Generating Station Order 2017) to acquire an interest in the land, and”.

#### *Application of the 1965 Act*

**4.**—(1) For the purposes of Article 18 only the 1965 Act is subject to the modifications in sub-paragraph 3(2).

(2) For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard is had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive 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.** 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);

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(a) 1973 c.26.

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

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

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

**7.** Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order, 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 or the enforcement of the restrictive covenant in question.

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

**9.** For Schedule 2A to the 1965 Act substitute—

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

### **Introduction**

**1.** This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

**2.** In this Schedule, “house” includes any park or garden belonging to a house.

### **Counter-notice requiring purchase of land**

**3.** A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

**4.** A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

### **Response to counter-notice**

**5.** On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

**6.** The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

**7.** If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

**8.** If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

**9.** If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

### **Determination by Upper Tribunal**

**10.** On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

**11.** In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

**(2)** If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

**(3)** Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

## SCHEDULE 8

Article 26

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 7**

(1) <i>Location</i>	(2) <i>Number of land shown on land plans</i>	(3) <i>Purpose for which temporary possession may be taken</i>
Land at Kingmoor Park, Wrexham located off the east side of Bryn Lane	PS1A	Temporary use to facilitate construction for numbered works 1-5
Land at Kingmoor Park, Wrexham located off the east side of Bryn Lane	PS1B	Temporary use to facilitate construction for numbered works 1-5
Land at Plum Tree Farm, Isycoed, Wrexham	GC3A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Big Bryn Farm, Isycoed, Wrexham	GC4A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Big Bryn Farm, Isycoed, Wrexham	GC4B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Big Bryn Farm, Isycoed, Wrexham	GC4C	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Big Bryn Farm, Isycoed, Wrexham	GC4D	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land

<i>(1) Location</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>
Land at Cae Brynner Farm, Bowling Bank, Wrexham	GC5A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Cae Brynner Farm, Bowling Bank, Wrexham	GC5B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Cae Brynner Farm, Bowling Bank, Wrexham	GC5D	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Cae Brynner Farm, Bowling Bank, Wrexham	GC5E	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Cae Brynner Farm, Bowling Bank, Wrexham	GC7A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Cae Brynner Farm, Bowling Bank, Wrexham	GC7B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Cae Brynner Farm, Bowling Bank, Wrexham	GC7C	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land

<i>(1) Location</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>
Land located to the west side of the B5130	GC8A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Higher Oak, Oak Road, Wrexham	GC9B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Higher Oak, Oak Road, Wrexham	GC9C	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Lower Oak Farm, Bowling Bank, Wrexham	GC10A	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Lower Oak Farm, Bowling Bank, Wrexham	GC10B	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land adjoining Lower Oak Farm, Bowling Bank, Wrexham	GC10C	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC12A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land

<i>(1) Location</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC12B - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC12D - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC12E - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham located to the north of the Maelor Gasworks	SAT1A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham located to the north of the Maelor Gasworks	GC14A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham located to the north of the Maelor Gasworks	GC14B - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham located to the north of the Maelor Gasworks	GC15A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land

<i>(1) Location</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC16A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC16B - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC16C - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land
Land at Pickhill Bridge Farm, Cross Lanes, Wrexham	GC17A - except in relation to that land or those interests held by the Welsh Ministers	Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land

## SCHEDULE 9 PROTECTIVE PROVISIONS

Article 34

### PART 1 FOR THE PROTECTION OF NATIONAL GRID

#### **Application**

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

#### **Interpretation**

**2.—(1)** In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“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, across, along or upon such land;

“National Grid” means National Grid Gas plc (Company No. 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

“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;

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 5(3) or otherwise; and/or

(b) include any of the activities that are referred to in paragraph 8 of TP/SSW/22 (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/SSW/22”).

(2) Except for paragraphs 3 (apparatus of National Grid in streets subject to temporary prohibition or restriction), 7 (retained apparatus: protection of National Grid as gas undertaker), 8 (expenses) and 9 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

## **Apparatus of National Grid in streets subject to temporary prohibition or restriction**

**3.** Notwithstanding the temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

## **Acquisition of land**

**4.—(1)** 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 must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

## **Removal of apparatus**

**5.—(1)** If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (3) to (6) inclusive.

(2) As a condition of agreement between the parties in paragraph 4, prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between the National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) If, for the purpose of executing any works comprised in the authorised development in, on, under or over 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 National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (4) afford to National Grid to their satisfaction (taking into account paragraph 6(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (3), in the land in which the alternative apparatus or part of such

apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(5) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(6) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (3) or (4), 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.

### **Facilities and rights for alternative apparatus**

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 38 (arbitration) of the Order shall apply.

### **Retained apparatus: protection of National Grid as Gas Undertaker**

7.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 5(3) (removal of apparatus) the undertaker must submit to National Grid a plan and seek from National Grid details of the apparatus belonging to or maintained by National Grid.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must show—

- (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;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (2)—

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

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus 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 to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (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 2 and 4 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(9) Nothing in this paragraph precludes 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 the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will 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 must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (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 specified works authorised under the Order the undertaker must 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" as the same may be replaced from time to time.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid 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 8.

## Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use

compulsory purchase powers to acquire any necessary rights under paragraph 5(4) all costs incurred as a result of such action;

- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) 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 must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, 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 situated,

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 settled by arbitration in accordance with article 38 (arbitration) of the Order 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 National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall 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 National Grid 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 National Grid 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

**9.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in 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 material damage is caused to any apparatus or alternative apparatus (other than apparatus the

repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (b) shall be subject to the full terms of this Schedule including this paragraph 9 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

**10.** Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid 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**

**11.—(1)** Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 5(3) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker shall use its 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 National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

## **Access**

**12.** If in consequence of the agreement reached in accordance with paragraph 4(1) 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 National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

**13.** Save for differences or disputes arising under paragraphs 5(3), 5(5), 6(1) and 7 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 38 (arbitration) of the Order.

## **PART 2**

### **FOR THE PROTECTION OF BT GROUP PLC**

**14.—(1)** For the protection of BT Group Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and BT Group Plc.

(2) In this part of this Schedule—

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

“BT apparatus” means all boxes, cables, poles and plant, associated cabling or ducting or such other electronic communications apparatus as is owned by BT Group Plc;

“BT apparatus map” means a map prepared by BT Group Plc showing the location of BT apparatus in or on the Order land;

“BT Group Plc” means British Telecommunications Public Limited Company (Company No. 01800000) whose registered office is at 81 Newgate Street, London, EC1A 7AJ which is an electronic communications code operator;

“Click Before You Dig” means the team within BT Group Plc charged with providing assistance to members of the general public in order to locate BT apparatus on land and includes any successor team within BT Group Plc with the same remit;

“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(b);

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“the highway” includes carriageways, verges, footpaths etc; and

“Network Alterations team” means the team within BT Group Plc charged with carrying out planned diversion and protection works to BT apparatus and includes any successor team within BT Group Plc with the same remit.

**15.—(1)** Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any BT apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of BT Group Plc; or

(b) there is any interruption in the supply of the service provided by BT Group Plc,

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(a) 2003 c.21.

(b) See section 106.

the undertaker must bear and pay the cost reasonably incurred by BT Group Plc in making good such damage or restoring the supply and make reasonable compensation to BT Group Plc for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) BT Group Plc must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and BT Group Plc under this part of this Schedule must be referred to and settled by arbitration under article 38 (arbitration).

**16.** This part of this Schedule does not apply to—

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

**17.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and BT Group Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**18.** The undertaker must not enter into any underground structures owned by BT Group Plc without authorised BT Group Plc personnel.

**19.** The undertaker must confirm the location and nature of works arising from the construction of the authorised development which, in the undertaker's reasonable opinion, are likely to affect BT apparatus within or immediately adjacent to the Order land by contacting the Network Alterations team with detailed plans of the works and to check what alterations to BT apparatus (if any) may be required.

**20.** Prior to any works commencing or the moving of heavy plant or equipment over BT apparatus within or immediately adjacent to the Order land, the undertaker must confirm details of such BT apparatus with a representative from Click Before You Dig who will provide a map(s) showing the location of BT apparatus within or immediately adjacent to the Order land.

**21.** In the event that any BT apparatus within or immediately adjacent to the Order land is likely to be placed at risk, either temporarily or permanently because of the movement of plant or equipment or both pursuant to the authorised development, the undertaker must contact a Network Alterations team representative.

**22.** In the event that works undertaken by the undertaker pursuant to the authorised development necessitate a change in level of the frames and covers comprised within BT apparatus, the undertaker must seek consent from a Network Alterations team representative to carry out such works.

**23.** Where the BT apparatus map(s) show(s) BT apparatus within or immediately adjacent to the Order land, the undertaker must contact Click Before You Dig before commencing works on or moving plant or equipment onto the Order land, to ensure that any sub-surface BT apparatus can be located and marked up by BT Group Plc.

**24.** Protection measures for BT apparatus within or immediately adjacent to the Order land and which may be affected by the authorised development must be approved in advance by Click Before You Dig. In carrying out the authorised development, the undertaker must take reasonable care in the protection of BT apparatus comprising optical fibre or co-axial cabling or both and use reasonable endeavours to avoid disturbing BT apparatus.

**25.** Prior written notice must be provided to Click Before You Dig of any excavating or backfilling proposed by the undertaker around BT apparatus, so that BT Group Plc representatives can attend the Order land if necessary. Unless alternative protection is agreed with Click Before You Dig or a Network Alterations team representative in advance, the normal depth of cover for BT apparatus underground of 350mm in footways and 600mm in carriageways must be maintained by the undertaker. Where the undertaker considers that it can not maintain the relevant depth of BT apparatus, the undertaker must provide written notice to Click Before You Dig, and BT Group Plc may, if reasonable in all the circumstances, within 14 days notify the undertaker in writing that it requires the undertaker to divert the BT apparatus at the undertaker's expense.

**26.** All excavation works undertaken by the undertaker immediately adjacent to BT apparatus within or immediately adjacent to the Order land is to be carried out by hand until the extent and location of the BT apparatus is known. Mechanical borers or excavators or both must not be used within 1 metre of BT Apparatus (2 metres if it is a pole) without the prior approval of a BT Group Plc representative.

**27.** To prevent any movement of BT apparatus within or immediately adjacent to the Order land during any excavation as part of the construction of the authorised development, structural support is to be used as directed by Click Before You Dig or the Network Alteration team if the excavation is—

- (a) deeper than the immediately adjacent BT apparatus;
- (b) within 1 metre of BT apparatus in stable soil; or
- (c) within 5 metres of BT apparatus in unstable soil.

**28.** The undertaker must notify Click Before You Dig in advance of carrying out any of the following methods of construction or site preparation as part of the authorised development on or in Order land that is immediately adjacent to BT apparatus or on or in Order land within which there is BT apparatus—

- (a) pile driving within 10 metres of BT apparatus;
- (b) using explosives within 20 metres of BT apparatus; or
- (c) using laser equipment within 10 metres of BT apparatus.

**29.** The undertaker will keep clear and unobstructed access to BT Group Plc manhole and joint box chambers within the Order land.

**30.** In the event of any damage to BT apparatus, the undertaker must immediately inform a BT Group Plc representative.

## PART 3

### FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG

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

**32.** In this Part of this Schedule—

“acceptable insurance” means a policy of public liability/third party liability insurance effected and maintained by the undertaker and available in the market on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable, with a level of insurance cover to be agreed between the undertaker and DCC, during the construction of the works pursuant to this Order with a reputable insurer and with DCC named as an insured party under the policy;

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

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

“clearance area” means the area of land—

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

“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 will 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 is to 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 c.56 as amended; 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.

**33.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must 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.

(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 each sub-paragraph of paragraphs 37 and 38 of this Part and to the undertaker giving DCC 28 days’ notice of such interference.

## Precedence of the WIA 1991

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

- (a) sections 41-44 of the WIA 1991 in respect of water main requisitions;
- (b) section 45 of the WIA 1991 in respect of any connections to a water main;
- (c) sections 98-101 of the WIA 1991 in respect of sewer requisitions;
- (d) section 102 of the 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 38 or specified in this Schedule do not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.

### **Protection of DCC apparatus**

**35.**—(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 34(1)(k), the undertaker must submit to DCC written notice together with a draft specification.

(2) DCC must examine the draft specification submitted under sub-paragraph (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 (2) must 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 (2), the draft specification is to be the specification and the works must be executed only in accordance with the specification and such reasonable requirements as may be made in accordance with sub-paragraph (2) and DCC is entitled to watch and inspect the execution of those works.

(4) Nothing in this paragraph 35 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 35 apply to and in respect of the new draft specification.

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency provided it has complied with paragraph 36 below save that the undertaker must comply with sub-paragraphs (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 (2) to DCC apparatus, and if DCC opts to do so it must—

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

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

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

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

(10) Any affected DCC apparatus which is no longer required by DCC but is not removed must 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**

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

- (a) the undertaker must procure that it and its contractor(s) and subcontractor(s) are to forthwith suspend or cease the works having due regard to health and safety factors and discuss and agree with DCC the remedial actions required prior to resuming the works;
- (b) the undertaker and DCC must act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
- (c) DCC must submit to the undertaker within 5 days following the suspension, a written notice specifying the reasons for suspending the works;
- (d) in the event that DCC fails to supply the written notice within 5 days of suspension DCC's instruction to suspend the works will be void and the undertaker will be entitled to recommence the works;
- (e) DCC must commence, carry out and complete any remedial works pursuant to subparagraph (a) as soon as reasonably practicable and DCC must give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker will be entitled to resume the works; and
- (f) DCC is entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 36.

**37.—(1)** In the event that either the undertaker or DCC (for the purpose of this paragraph 37 “the party” or together “the parties”) wishes to take any action which would impact on the ability of the undertaker to carry out the development or DCC to carry out its statutory functions, the parties must use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party’s works. In respect of the references to ‘work’ and ‘works’ in this sub-paragraph (1), to the extent that this refers to ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 32 of this Part does not apply.

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

### **Emergency Works**

**38.—(1)** The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works. For the avoidance of doubt, in the event that DCC suffers

any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 40 shall apply.

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

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

(4) In respect of the references to ‘work’ and ‘works’ in this paragraph 38, to the extent that this is ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 32 of this Part does not apply.

## **Insurance**

**39.** The undertaker shall not commence any works under paragraph 35(1) to this Part unless and until the undertaker has procured acceptable insurance.

## **Damage to DCC apparatus**

**40.**—(1) Subject to sub-paragraphs (3), (4), (5) and (6), the undertaker shall indemnify and hold harmless DCC against all claims demands costs damages expenses penalties and losses which DCC may have or sustain or become liable for in consequence of works under paragraph 35(1) to this Part in respect of—

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

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

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

(4) DCC shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker and DCC shall use all reasonable endeavours to mitigate any claims, demand, costs, damages, expenses and losses for which the undertaker may be liable under this paragraph 40.

(5) Neither the undertaker, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to DCC for any indirect or consequential loss.

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

## PART 4

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**41.**—(1) For the protection of any operator referred to in this part of this Schedule (save for BT Group Plc which is protected by Part 2 of this Schedule) the following provisions 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(a);

“BT Group Plc” means British Telecommunications Public Limited Company (Company No. 01800000) whose registered office is at 81 Newgate Street, London, EC1A 7AJ;

“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)(b) 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(c);

“electronic communications code network” means—

(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 the 2003 Act; and

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

**42.**—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) 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; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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(a) 2003 c.21.

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(c) See section 106.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 38 (arbitration).

**43.** This part of this Schedule does not apply—

- (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, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**44.** 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.

## PART 5

### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

#### Application

**45.** For the protection of the utility undertakers referred to in this Part of this Schedule (save for National Grid which is protected by Part 1 of this Schedule and Wales and West Utilities which is protected by Part 6 of this Schedule) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker(s) concerned.

#### Interpretation

**46.** In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b);
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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(a) 1989 c. 29; Section 64 was amended by the Utilities Act 2000 (c.27); Section 108, and Schedule 6, paragraphs 24, 38(1), and (3).

(b) 1991 c.56.

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989(a);
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b);
- (g) a water undertaker within the meaning of the Water Industry Act 1991(c); and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

#### **Precedence of 1991 Act in respect of apparatus in streets**

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

#### **Apparatus in streets subject to temporary prohibition or restriction**

**48.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

#### **No acquisition etc. except by agreement**

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

#### **Removal of apparatus**

**50.—(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 or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with subparagraphs (2) to (7).

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

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(a) 1989 c. 29.

(b) 1986 c. 44; Section 48 amended by Gas Act 1995 (c.45); Section 10(1), and by Schedule 3, paragraph 54(1)(h) and by the Utilities Act 2000 (c.27); Section 108, and Schedule 6, Part I, paragraphs 1, and 2(1).

(c) 1991 c.56.

of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

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

### **Facilities and rights for alternative apparatus**

**51.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**52.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 47, the undertaker must submit to the utility 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 utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

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

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 45 to 51 apply as if the removal of the apparatus had been required by the undertaker under paragraph 50(2).

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

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

**53.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 50(2).

(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 38 (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 utility 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)—

- (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 where such extension is required in consequence of the execution of any such works as are referred to in paragraph 50(2); 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 utility undertaker in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

### **Expenses and costs**

**54.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 50(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

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

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

## PART 6

### FOR THE PROTECTION OF WALES AND WEST UTILITIES

#### **Application**

**56.** For the protection of Wales and West Utilities as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Wales and West Utilities, have effect.

#### **Interpretation**

**57.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Wales and West Utilities to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Wales and West Utilities for the purposes of gas supply;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“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;

“security infrastructure” includes cameras, perimeter fencing, fencing and gates and any other security measures required in order to ensure an appropriate level of security in respect of the authorised development or any apparatus;

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which—

- (a) are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which is not required under paragraph 61 of this Schedule; and/or
- (b) will or may be situated within 4 metres measured in any direction of any security infrastructure belonging to or maintained by Wales and West Utilities; and/or
- (c) comprise security infrastructure to be located on plot AGI1 shown on the land plans and described in the book of reference; and

“Wales and West Utilities” means Wales and West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close, Coedkernew, Newport, South Wales, NP10 8FZ.

### **Precedence of 1991 Act in respect of apparatus in streets**

**58.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Wales and West Utilities are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus in streets subject to temporary prohibition or restriction**

**59.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), Wales and West Utilities is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

### **No acquisition etc. except by agreement**

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

### **Removal of apparatus**

**61.—(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 or over which access to any apparatus is enjoyed or requires that Wales and West Utilities’ apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Wales and West Utilities to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Wales and West Utilities in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give Wales and West Utilities written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Wales and West Utilities reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Wales

and West Utilities the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Wales and West Utilities must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Wales and West Utilities and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(5) Wales and West Utilities, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to Wales and West Utilities of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**62.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Wales and West Utilities facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Wales and West Utilities or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Wales and West Utilities than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Wales and West Utilities as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**63.**—(1) Not less than 42 days before the commencement of any specified work the undertaker must submit to Wales and West Utilities a plan, section and description of the specified work to be executed.

(2) Those specified 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 (including but not limited to the form, location and specification of security infrastructure to be located on plot AGI1 shown on the land plans and described in the book of reference) as may be made in accordance with sub-paragraph (4) by Wales and West Utilities for—

- (a) the alteration or otherwise for the protection of the apparatus, or for securing access to it; and/or
- (b) the alteration or otherwise for the protection of any security infrastructure belonging to or maintained by Wales and West Utilities; and/or
- (c) the provision, construction, installation or erection of any security infrastructure to be located on Plot AGI1 shown on the land plans and in the book of reference.

(3) Wales and West Utilities is entitled to watch and inspect the execution of any specified work.

(4) Any requirements made by Wales and West Utilities under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(5) If Wales and West Utilities in accordance with sub-paragraph (4) 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 61 and 62 apply as if the removal of the apparatus had been required by the undertaker under paragraph 61(2).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified work, 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.

(7) The undertaker is not required to comply with sub-paragraph (1) in the event of any specified work necessary to maintain—

- (a) the authorised development (but only after it has been constructed); or
- (b) works undertaken in association with the authorised development on plot AGI1 shown on the land plans and described in the book of reference (but only after such works have been constructed),

in a case of emergency but in that case it must give to Wales and West Utilities notice as soon as is reasonably practicable and a plan, section and description of those specified works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

**64.** Subject to the following provisions of this paragraph, the undertaker must repay to Wales and West Utilities the reasonable expenses incurred by Wales and West Utilities in, or in connection with, the inspection, removal, alteration or protection of any apparatus or security infrastructure or the construction of any new apparatus or security infrastructure which may be required in consequence of the execution of any of the works referred to in paragraph 61(2) or any specified work.

**65.—(1)** Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 61(2) or any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Wales and West Utilities, or there is any interruption in any service provided, or in the supply of any goods, by Wales and West Utilities, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Wales and West Utilities in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Wales and West Utilities for any other expenses, loss, damages, penalty or costs incurred by the Wales and West Utilities,

by reason or in consequence of any such damage or interruption.

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

(3) Wales and West Utilities must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

## **Enactments and agreements**

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

## **PART 7**

### **FOR THE PROTECTION OF THE SOLAR OPERATOR**

#### **Application**

**67.** For the protection of the solar operator as referred to in this Part of this Schedule 9, the following provisions will, unless otherwise agreed in writing between the undertaker and the solar operator, have effect.

#### **Interpretation**

**68.** In this Part of this Schedule—

“apparatus” means any solar photovoltaic panels, cables or other apparatus belonging to or maintained by the solar operator for the purposes of electricity generation and for the export of electricity pursuant to the solar farm permission (including but not limited to all reasonably necessary protective equipment for such electricity generation and export of electricity such as security devices and fencing);

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule is to include the use and maintenance of the authorised development;

“diversionary agreement” means a contractually binding agreement providing for the passage of a gas pipeline around the solar farm site;

“diversionary planning permission” means any planning permission that may be granted pursuant to the 1990 Act providing for the routing of a gas pipeline to avoid the solar farm site;

“gas pipeline” means a pipeline to carry gas between Maelor Gasworks and Work No. 1;

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

“solar farm permission” means full planning permission granted on 31 July 2015 by Wrexham County Borough Council for the apparatus (Ref P/2015/0287) including any planning permission granted pursuant to an application to vary any condition of planning permission (Ref P/2015/0287) under section 73 of the 1990 Act;

“solar farm site” means the site on which planning permission was granted by the solar farm permission;

“solar operator” means the operator from time to time of the solar farm on the solar farm site which has consent pursuant to the solar farm permission; and

“specified work” means so much of any of the works comprised in the authorised development or works required to facilitate or which are incidental to the authorised development (including, but without limitation, the gas pipeline) which are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus.

## **Removal of apparatus**

**69.**—(1) If, for the purpose of executing any specified work, the undertaker requires the removal of any apparatus in the solar farm site, the undertaker must give the solar operator written notice of that requirement, together with a plan and section of the work proposed and a plan, section and description of the specified work to be executed with written confirmation of the extent to which the removed apparatus can be reinstated as soon as reasonably practicable following completion of the execution of the specified work.

(2) Within 56 days of receipt of the written notice referred to in sub-paragraph (1) the solar operator must proceed without unnecessary delay to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(3) Regardless of anything in sub-paragraph (2), the undertaker may, in the notice issued under sub-paragraph (1), give notice to the solar operator that it desires itself to execute any work, or part of any work, in connection with the removal of apparatus in any of plots GC12, GC12A and GC12B as identified on the land plans, and where such notice is given that work, instead of being executed by the solar operator, must be executed by the undertaker within 56 days of the solar operator receiving such notice.

(4) Where notice is given in the circumstances described in sub-paragraph (3), the undertaker must provide the solar operator with the opportunity to supervise any work, or part of any work, in connection with the removal of apparatus but if the solar operator does not provide any superintendence within the required 56 days, then the undertaker may proceed to execute the works.

(5) Nothing in sub-paragraphs (3) or (4) authorises the undertaker to execute the connection or disconnection of any apparatus. In carrying out any works under sub-paragraph (3) or (4), the undertaker must comply with all statutory obligations which would have been applicable had the works been carried out by the solar operator and the undertaker must ensure that the works are carried out by persons competent and suitably qualified to carry out such works.

(6) Where the undertaker has served written notice in accordance with sub-paragraph (1) the solar operator must proceed to disconnect any apparatus to be removed without delay upon written request from the undertaker.

(7) Where the undertaker has served written notice in accordance with sub-paragraph (1), the solar operator must, within 56 days of receipt of such notice, give written notice to the undertaker whether it requires the undertaker to reinstate the removed apparatus in accordance with such reasonable requirements as the solar operator may specify and if no notice is received by the undertaker, the undertaker is under no obligation to reinstate the removed apparatus.

## **Retained apparatus**

**70.**—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 69 (removal of apparatus) the undertaker must submit to the solar operator a plan, section and description of the specified work to be executed.

(2) Those specified 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 (4) by the solar operator for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(3) The solar operator is entitled to watch and inspect the execution of any specified work.

(4) Any requirements made by the solar operator 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.

(5) If the solar operator in accordance with sub-paragraph (4) 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, paragraph 69 (removal of apparatus) applies as if the removal of the apparatus had been required by the undertaker under paragraph 69(1).

(6) Nothing in this paragraph precludes 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 specified work, 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.

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

### **Expenses and costs**

**71.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the solar operator the reasonable expenses incurred by the solar operator in, or in connection with, the inspection, removal, reinstatement, alteration or protection of any apparatus which may be required in consequence of the execution of any of any of the works referred to in paragraph 69 or any specified work.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed and not reinstated 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 (as provided for in paragraph 74 (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 solar operator by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraphs 69 or 70; 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 the solar operator in respect of works by virtue of sub-paragraph (1) 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 the solar operator any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**72.**—(1) Subject to sub-paragraphs (2) and (3), if by reason of or in consequence of the construction of any of the works referred to in paragraphs 69 or 70 or any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the solar

operator, or there is any interruption in any service provided, or in the supply of any goods, by the solar operator, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the solar operator in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the solar operator for any other expenses, loss, damages, penalty or costs incurred by the solar operator,

by reason or in consequence of any such damage or interruption.

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

(3) The solar operator must give the undertaker reasonable notice of any claim or demand pursuant to sub-paragraph (1) above and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Co-operation**

**73.** Where in consequence of the proposed construction of any of the authorised development or any specified work, the solar operator makes requirements for the protection or removal of apparatus under paragraphs 69(4) or 69(5), the undertaker shall use its 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/or any specified work and taking into account the need to ensure the safe and efficient and economic operation of the apparatus and the solar operator shall use its best endeavours to co-operate with the undertaker for that purpose.

### **Arbitration**

**74.** Any difference or dispute arising between the undertaker and the solar operator under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the solar operator, be determined by arbitration in accordance with article 38 (arbitration).

### **Enactments and agreements**

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

### **Compulsory acquisition and temporary use**

**76.**—(1) The rights set out in sub-paragraph (2) are not exercisable by the undertaker over the solar farm site if—

- (a) a diversionary agreement has been concluded; and
- (b) a diversionary planning permission has been granted which authorises the construction of a gas pipeline over the route to which the diversionary agreement applies; and
- (c) the land has been acquired by the undertaker under the diversionary agreement.

(2) Sub-paragraph (1) applies to the following rights—

- (a) article 17 (compulsory acquisition of land);
- (b) article 18 (compulsory acquisition of rights etc);
- (c) article 22 (acquisition of subsoil only);
- (d) article 24 (private rights);
- (e) article 25 (rights under or over streets);
- (f) article 26 (temporary use of land for carrying out the authorised development);

- (g) article 27 (temporary use of land for maintaining the authorised development); and
- (h) article 28 (statutory undertakers).

## SCHEDULE 10

Article 37

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**1.**—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order the relevant authority must give notice to the undertaker of their decision on the application within a period of eight weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant authority in writing.

(2) Subject to sub-paragraph (3), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order;
- (b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved, then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(4) Where any application is made as described in sub-paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by sub-paragraphs (1), (2) and (3).

(5) Where an application is made to the relevant planning authority for any consent, agreement or approval required by requirements 3(1), 4(1), 5(1), 12(1) or 13(1) (including agreement or approval in respect of part of a requirement), the undertaker must at the same time as making the application send a copy of the materials provided in support of the application to NRW and, in respect of requirement 12(1) only, Dŵr Cymru Cyfyngedig, and must draw NRW and Dŵr Cymru Cyfyngedig's attention to the procedure set out in paragraphs 1 to 3 of this Schedule and state that any comments must be provided to the relevant planning authority within 21 days if they are to be considered by the relevant planning authority.

(6) Where an application is made to the relevant planning authority for any consent, agreement or approval required by requirements 3(1), 4(1), 5(1), 12(1) or 13(1) (including agreement or approval in respect of part of a requirement), the relevant planning authority is not required to consider comments received from NRW and, in respect of requirement 12(1) only, Dŵr Cymru Cyfyngedig more than 21 days after the date of the application.

(7) Where an application is made to the relevant planning authority for any consent, agreement or approval required by an article or requirement in this Order and the relevant planning authority intends to consult NRW and Dŵr Cymru Cyfyngedig in relation to that application, the undertaker must as soon as reasonably practicable comply with any direction from the relevant planning authority to provide a copy of the materials provided in support of the application to each body specified in the direction.

## **Further information**

**2.**—(1) In relation to any part of the application to which this Schedule applies, the relevant authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that it considers such further information to be necessary the relevant authority must, within twenty one days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant authority does not give such notification within this twenty one day period it is deemed to have sufficient information to consider the application and thereafter is not entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph 2 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b), paragraph 1(3) and this paragraph 2.

## **Appeals**

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

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 1(3)) an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any article or requirement consultee (together with the undertaker, these are the “appeal parties”);
- (b) The Secretary of State must appoint a person as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent;
- (c) The relevant authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty six days of the appointment of the person pursuant to sub-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 twenty six days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within forty days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to sub-paragraph (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 must, within twelve days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant authority and any requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within fourteen days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c) to (e).

(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 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.

(6) The appointed person may take into account written representations that have been sent outside of the relevant time limits but the appointed person must proceed to a decision within the time limits set by this Schedule.

(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 to be 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 1 (authorised development) of this Order as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(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 authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant 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 must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

**4.** In this Schedule “relevant authority” means the relevant planning authority, relevant highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought.

## **EXPLANATORY NOTE**

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

This Order authorises Wrexham Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station of up to 299 MWe. The Order would permit the undertaker to acquire, compulsorily or by agreement, rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans etc.) may be inspected free of charge during working hours at Contact Wrexham, 16 Lord Street, Wrexham LL11 1LG

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