

SCHEDULE 11(1)

Article 38

PROTECTIVE PROVISIONS

PART 1

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

1. For the protection of the utility undertakers referred to in this part of this Schedule (save for National Grid which is protected by Part 3 of this Schedule, Western Power Distribution (South Wales) plc which is protected by Part 4 of this Schedule, Dŵr Cymru Cyfyngedig which is protected by Part 5 of this Schedule, Abergelli Solar Limited which is protected by Part 6 of this Schedule, and Wales and West Utilities Limited which is protected by Part 7 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

Commencement Information

II Sch. 11 para. 1 in force at 10.10.2019, see [art. 1](#)

2. 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 1989 Act), 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(2);
- (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(3) or an agreement to adopt made under section 104 of that Act,

(1) The protective provisions within this Schedule are draft protective provisions and are being discussed with the relevant statutory undertaker.

(2) 1991 c.56; Section 51A to the 1991 Act was inserted by section 92(1) of the Water Act 2003 (c.37) and amended by sections 10(2)(a), 10(2)(b) and 10(2)(c) of the Water Act 2014 (c.21).

(3) 1991 c.56. Section 102 was amended by sections 96(1)(a), 96(1)(b), 96(1)(c), 96(1)(d) and 96(1)(e) of the Water Act 2003 c.37 and paragraph 90 of Schedule 7 to the Water Act 2014 c.21. Section 104 was amended by section 96(4) and paragraph 9 of Schedule 1 to the Water Act 2003, section 42(3) of the Flood and Water Management Act 2010 (c.29) and section 11(2) of the Water Act 2014 (c.21).

Changes to legislation: There are currently no known outstanding effects for the The Abergelli Power Gas Fired Generating Station Order 2019, SCHEDULE 11. (See end of Document for details)

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—

- (a) any licence holder within the meaning of Part 1 of the 1989 Act;
 - (b) a gas transporter within the meaning of Part 1 of the 1986 Act;
 - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (d) 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.

Commencement Information

I2 Sch. 11 para. 2 in force at 10.10.2019, see [art. 1](#)

3. 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.

Commencement Information

I3 Sch. 11 para. 3 in force at 10.10.2019, see [art. 1](#)

4. 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.

Commencement Information

I4 Sch. 11 para. 4 in force at 10.10.2019, see [art. 1](#)

5. 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.

Commencement Information

I5 Sch. 11 para. 5 in force at 10.10.2019, see [art. 1](#)

6.—(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 sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, 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 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 42 (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 42, 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 filing around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Commencement Information

16 Sch. 11 para. 6 in force at 10.10.2019, see [art. 1](#)

7.—(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 42.

(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.

Commencement Information

I7 Sch. 11 para. 7 in force at 10.10.2019, see [art. 1](#)

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, 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 6(2), 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 the 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 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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.

Commencement Information

I8 Sch. 11 para. 8 in force at 10.10.2019, see [art. 1](#)

9.—(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 6(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 42 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 the 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 6(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.

Commencement Information

19 Sch. 11 para. 9 in force at 10.10.2019, see [art. 1](#)

10.—(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 6(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.

Commencement Information

I10 Sch. 11 para. 10 in force at 10.10.2019, see [art. 1](#)

11. 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.

Commencement Information

I11 Sch. 11 para. 11 in force at 10.10.2019, see [art. 1](#)

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, 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(4);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act(5);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act, and

(b) a network which the Secretary of State is providing or proposing to provide;

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

Commencement Information

I12 Sch. 11 para. 12 in force at 10.10.2019, see [art. 1](#)

(4) [2003 c.21](#) as amended by the Digital Economy Act 2017 ([c.30](#)).

(5) These amendments were made by Schedule 1 of the Digital Economy Act 2017 ([c.30](#)).

13. The exercise of the powers of article 30 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

Commencement Information

I13 Sch. 11 para. 13 in force at 10.10.2019, see [art. 1](#)

14.—(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.

(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 42 (arbitration).

Commencement Information

I14 Sch. 11 para. 14 in force at 10.10.2019, see [art. 1](#)

15. This part of this Schedule does not apply to—

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

Commencement Information

I15 Sch. 11 para. 15 in force at 10.10.2019, see [art. 1](#)

16. 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.

Commencement Information

I16 Sch. 11 para. 16 in force at 10.10.2019, see [art. 1](#)

PART 3

FOR THE PROTECTION OF NATIONAL GRID

Application

17. For the protection of National Grid as referred to in this part 3 of Schedule 11 the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Commencement Information

I17 Sch. 11 para. 17 in force at 10.10.2019, see [art. 1](#)

Interpretation

18. 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—

- (a) electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid;
- (b) mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order or planning permission for the associated works that becomes operational apparatus of the undertaking for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“associated works” means the works permitted pursuant to planning permissions reference 2018/2020/FUL and 2018/2020/FUL each granted by the City and County of Swansea on 6 December 2018;

“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 construction, use and maintenance of the authorised development and the associated works, including the construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of the Order save that for the purposes only of this Part of Schedule 11 operations consisting environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions and receipt and erection of construction plan and equipment shall be included within the meaning of commence and the term “commencement” is to be construed to have the same meaning;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interest so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

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

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

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

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

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

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

“National Grid” means either—

- (a) National Grid Electricity Transmission PLC (company no. 2366977) whose registered office is at 1–3 Strand, London, WC2N 5EH; or
- (b) National Grid Gas PLC (company no. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH,

as the context shall require;

“specified works” means any part of the authorised development or any activities taken in association with the authorised development including associated works where such development, activities or works—

- (a) will or may be situated over, under or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 22(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 22(2) or otherwise; and
- (c) includes any activity that is referred to in paragraph 8 of T/SP/SSW/22 (the undertaker’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”);

Commencement Information

118 Sch. 11 para. 18 in force at 10.10.2019, see **art. 1**

19. Except for paragraphs **20** (apparatus of National Grid in streets subject to temporary prohibition or restriction), **24** (retained apparatus: protection), **25** (retained apparatus: protection), **26** (expenses) and **27** (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.

Commencement Information

I19 Sch. 11 para. 19 in force at 10.10.2019, see [art. 1](#)

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

20.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 12 (stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) 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.

Commencement Information

I20 Sch. 11 para. 20 in force at 10.10.2019, see [art. 1](#)

Acquisition of land

21.—(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) Prior to the carrying out of any part of the authorised development or associated works (or in such other timeframe as may be agreed between the undertaker and National Grid) that is subject to the requirements of this Part of this Schedule that causes any conflict with or breach the terms of any existing easement and/or other legal or land interest of National Grid and/or affects the provisions of any existing 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 the undertaker and National Grid acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it must 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 part of the authorised development.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of 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.

(4) Any agreement or consent granted by National Grid under paragraph 24 or 25 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Commencement Information

I21 Sch. 11 para. 21 in force at 10.10.2019, see [art. 1](#)

Removal of apparatus

22.—(1) If, in the exercise of the agreement reached in accordance with paragraph 21 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 (2) to (5) inclusive.

(2) If, for the purpose of executing any works 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 (3), afford to National Grid to their satisfaction (taking into account paragraph 23(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.

(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, 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 so do.

(4) Any alternative apparatus to be constructed in land of 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.

(5) 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 (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.

Commencement Information

I22 Sch. 11 para. 22 in force at 10.10.2019, see [art. 1](#)

Facilities and rights for alternative apparatus

23.—(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 under paragraph 31 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 42 (arbitration) of the Order shall apply.

Commencement Information

I23 Sch. 11 para. 23 in force at 10.10.2019, see [art. 1](#)

Retained apparatus: protection of National Grid as Gas Undertaker

24.—(1) Not less than 56 days before the commencement of any specified work, the undertaker must submit to National Grid a plan and, if reasonably required by National Grid a ground monitoring scheme in respect of those works, the plan to be submitted to National Grid shall 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 etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid’s “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22”).

(2) The undertaker must not commence any works to which sub-paragraph (1) and (8) applies until National Grid has given written approval of the plan so submitted.

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4) or (6); and
- (b) must not be unreasonably withheld.

(4) In relation to any work to which sub-paragraph (1) and (8) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(5) Works executed under sub-paragraph (1) or (8) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) and (8) or as relevant sub-paragraph (3), 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 (4), (6) and/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 shall be entitled to watch and inspect the execution of those works.

(6) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (8) (except in an emergency).

(7) If National Grid in accordance with sub-paragraph (4) or (6) 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 (5) to (6) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

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

(9) The undertaker shall not be required to comply with sub-paragraph (1) where, as part of any specified works, 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 shall—

- (a) comply with sub-paragraphs (4), (5) and (6) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (10) at all times.

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

(11) 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 26.

(12) The plans submitted to National Grid by the undertaker pursuant to sub-paragraph (1) and (8) and/or paragraph 25(1) must be sent to plantprotection@nationalgrid.com and cc'd to spencer.jeffries@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Commencement Information

I24 Sch. 11 para. 24 in force at 10.10.2019, see [art. 1](#)

Retained apparatus: protection of National Grid as Electricity Undertaker

25.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted under sub-paragraph (1) shall 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;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

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

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

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

(5) Any approval of National Grid required under sub-paragraph (1), (2) or (3)—

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

(6) In relation to a work to which sub-paragraphs (1), (2) or (3) 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.

(7) Works executed under sub-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (6), 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), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies 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).

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (7) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

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

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

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Commencement Information

I25 Sch. 11 para. 25 in force at 10.10.2019, see [art. 1](#)

Expenses

26.—(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 apparatus 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 all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 22(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (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 Part of 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 42 (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 operations, 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.

Commencement Information

I26 Sch. 11 para. 26 in force at 10.10.2019, see [art. 1](#)

Indemnity

27.—(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 or associated works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by

him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any 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 associated works or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker 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 27 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 be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering their representations.

Commencement Information

I27 Sch. 11 para. 27 in force at 10.10.2019, see [art. 1](#)

Enactments and agreements

28. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the promoter, 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.

Commencement Information

I28 Sch. 11 para. 28 in force at 10.10.2019, see [art. 1](#)

Co-operation

29. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order the associated works or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 22(2) and paragraph 24 or 25) or any works required by National Grid in respect of their apparatus within and adjoining the Order land 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.

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Commencement Information

I29 Sch. 11 para. 29 in force at 10.10.2019, see [art. 1](#)

Access

30. If in consequence of the agreement reached in accordance with paragraph 21(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.

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Commencement Information

I30 Sch. 11 para. 30 in force at 10.10.2019, see [art. 1](#)

Arbitration

31. Save for differences or disputes arising under paragraphs 22(2), 22(4), 23(1), 24 and 25 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 42 (arbitration) of the Order.

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Commencement Information

I31 Sch. 11 para. 31 in force at 10.10.2019, see [art. 1](#)

PART 4

FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION (SOUTH WALES) PLC

Application

32. For the protection of Western Power Distribution (South Wales) plc as referred to in this Part 4 of Schedule 11 the following provisions, unless otherwise agreed in writing between the undertaker and Western Power Distribution (South Wales) plc, have effect.

Commencement Information

I32 Sch. 11 para. 32 in force at 10.10.2019, see [art. 1](#)

Interpretation

33. In this Part of this Schedule—

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

“alternative rights” means all and any necessary legal easements, consents, or permissions required by WPD in order to permit or authorise a diversion;

“apparatus” means electric lines or electrical plant as defined in the 1989 Act belonging to or maintained by WPD;

“diversion” means an alteration to the WPD Network in order to enable or facilitate 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;

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

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“WPD” means Western Power Distribution (South Wales) plc (Company No. 02366985) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“WPD Network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act; and

for the avoidance of doubt, all other terms as defined in article 2 (interpretation) of this Order.

Commencement Information

I33 Sch. 11 para. 33 in force at 10.10.2019, see [art. 1](#)

Precedence of 1991 Act in respect of apparatus in streets

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

Commencement Information

I34 Sch. 11 para. 34 in force at 10.10.2019, see [art. 1](#)

No acquisition or extinguishment except by agreement

35. 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.

Commencement Information

I35 Sch. 11 para. 35 in force at 10.10.2019, see [art. 1](#)

Removal of apparatus

36.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD 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 WPD reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to WPD the necessary facilities and rights for the construction of alternative apparatus in other land owned or controlled by the undertaker and subsequently for the maintenance of that apparatus and—

- (a) if, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed;
- (b) should the undertaker not be able to obtain the alternative rights required under sub-paragraph (a) then the undertaker and WPD shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights; and
- (c) if alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (a) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph (b), WPD shall on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances 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 a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(3) Any alternative apparatus required pursuant to sub-paragraph (2) shall be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 39.

(4) WPD shall, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 39, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (2), 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 11.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to WPD 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 of the undertaker, that work, instead of being executed by WPD, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(6) Nothing in sub-paragraph (5) shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

(7) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD 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 WPD or in default of agreement settled in accordance with paragraph 39.

(8) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

(9) 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 expert less favourable on the whole to WPD 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 expert shall make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

(10) If in accordance with the provisions of this Part of this Schedule WPD require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WPD shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to paragraph 38(1).

(11) For the purposes of sub-paragraph (10)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

Commencement Information

I36 Sch. 11 para. 36 in force at 10.10.2019, see **art. 1**

37.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified works, the undertaker shall submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, and identified any reasonable requirements it has in relation to the carrying out of the works such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 60 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD and WPD shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker shall comply with WPD's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Addition) (2014) as the same may be replaced from time to time.

(6) If WPD, 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 32 to 36 apply as if the removal of the apparatus had been required by the undertaker under paragraph 36(2).

(7) Nothing in this paragraph 37 precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 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.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to WPD 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 (3) in so far as is reasonably practicable in the circumstances.

Commencement Information

I37 Sch. 11 para. 37 in force at 10.10.2019, see [art. 1](#)

Expenses and costs

38.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any alternative apparatus arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of 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 WPD the undertaker is to—

- (a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and

- (b) reimburse WPD for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by WPD, by reason or in consequence of any such damage or interruption.
- (3) Nothing in sub-paragraph (2) 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 WPD, its officers, servants, contractors or agents.
- (4) WPD 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, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (5) WPD shall not be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Commencement Information

I38 Sch. 11 para. 38 in force at 10.10.2019, see [art. 1](#)

Expert determination

39.—(1) Article 42 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

Commencement Information

I39 Sch. 11 para. 39 in force at 10.10.2019, see [art. 1](#)

PART 5

FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG

Application

40. For the protection of DCC referred to in this Part 5 of Schedule 11, the following provisions will, unless otherwise agreed in writing between the undertaker and DCC, have effect.

Commencement Information

I40 Sch. 11 para. 40 in force at 10.10.2019, see [art. 1](#)

Interpretation

41. In this Part of this Schedule—

“accessories” has the same meaning as that set out in section 219 of the WIA 1991⁽⁶⁾ (general interpretation) 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;

“clearance area” means the area of land—

within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;

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;

within 9 metres either side of the centre line of a rising main; or

within 25 metres either side of the centre line of the 66 inch water main which crosses Numbered Works 2, 3, 4 and 5A;

“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;

“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 wastewater treatment works;

“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

⁽⁶⁾ 1991 c.56. Section 219 was amended by paragraph 110 of Schedule 17 of the Communications Act 2003

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 of the 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(7)(as amended);

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

for the avoidance of doubt, all other terms are as defined in article 2 (interpretation) of this Order.

Commencement Information

I41 Sch. 11 para. 41 in force at 10.10.2019, see [art. 1](#)

No acquisition or extinguishment except by agreement

42.—(1) Subject to sub-paragraph (2), 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 46 and 47 of this Part and to the undertaker giving DCC 28 days’ notice of such interference.

Commencement Information

I42 Sch. 11 para. 42 in force at 10.10.2019, see [art. 1](#)

Precedence of the WIA 1991

43.—(1) Regardless of any provision of this Order and this Part of 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

(7) [1991 c.56.](#)

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 to 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 to 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 42 or specified in this Part of Schedule 11 do not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.

Commencement Information

I43 Sch. 11 para. 43 in force at 10.10.2019, see [art. 1](#)

Protection of DCC apparatus

44.—(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 [43\(1\)\(k\)](#), 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 [44](#) 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 [44](#) 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 45 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 and safety requirements are permitted to make openings into or connections with 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 or connections with 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.

(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.

Commencement Information

I44 Sch. 11 para. 44 in force at 10.10.2019, see [art. 1](#)

Suspension of works

45.—(1) 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 contractors or subcontractors in carrying out the works, have caused damage to any DCC apparatus or are likely to cause or result in damage to any DCC apparatus 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 contractors and subcontractors 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 3 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 3 days of suspension, DCC's instruction to suspend the works will be void and the undertaker will be entitled to recommence the works; and

- (e) DCC must commence, carry out and complete any remedial works pursuant to sub-paragraph (1), 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.
- (2) DCC is entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 45.
- (3) DCC must use its reasonable endeavours to minimise any costs, expenses, loss, demands and penalties to which this paragraph 45 applies. If requested to do so by the undertaker, DCC must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 45 for claims reasonably incurred by DCC.

Commencement Information

I45 Sch. 11 para. 45 in force at 10.10.2019, see [art. 1](#)

46.—(1) In the event that either the undertaker or DCC (for the purpose of this paragraph 46 “the party” or together “the parties”) wishes to take any action which would impact on the ability of the undertaker to carry out the authorised 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 reference 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 41 does not apply.

(2) Subject to paragraph 47, differences or disputes arising between the undertaker and DCC under this Part of Schedule 11 must, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 42 (arbitration) of the Order.

Commencement Information

I46 Sch. 11 para. 46 in force at 10.10.2019, see [art. 1](#)

Emergency Works

47.—(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 in accordance with this sub-paragraph the indemnity in paragraph 48 is to 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 (Other rights of entry and related powers).

(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph (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 reference to ‘work’ and ‘works’ in this paragraph 47, to the extent that is ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 41 of this Part does not apply.

Commencement Information

I47 Sch. 11 para. 47 in force at 10.10.2019, see [art. 1](#)

Damage to DCC apparatus

48.—(1) Subject to sub-paragraphs (3), (4), (6) and (7), the undertaker must indemnify and hold harmless DCC against all claims, demands, costs, damages, expenses, penalties and losses which DCC sustains or becomes liable for in consequence of works under paragraph 44(1) and emergency works under paragraph 47 (but only where such emergency works are carried out by the undertaker without prior notification to DCC in accordance with paragraph 47) 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 must 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; and
- (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), (6) and (7), 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 is to be made without the consent of the undertaker.

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

(6) Nothing in this Part affects 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.

(7) DCC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 48 applies. If requested to do so by the undertaker, DCC must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 48 for claims reasonably incurred by DCC.

Commencement Information

I48 Sch. 11 para. 48 in force at 10.10.2019, see [art. 1](#)

PART 6

FOR THE PROTECTION OF ABERGELLI SOLAR LIMITED

Application

49. For the protection of the solar operator as referred to in this Part 6 of this Schedule 11, the following provisions will, unless otherwise agreed in writing between the undertaker and the solar operator, have effect.

Commencement Information

I49 Sch. 11 para. 49 in force at 10.10.2019, see [art. 1](#)

Interpretation

50. In this Part of this Schedule—

“apparatus” means any electrical cables, fibre optic 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);

“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 by the City and County of Swansea on 28 May 2013 for the installation of ground mounted array of solar panels, inverter substations and 2.4m fencing on the land at Abergelli Farm, Felindre, Swansea, SA5 7NN (ref 2013/0135);

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

“solar operator” means Abergelli Solar Limited (Company No. 07529596) being the operator 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 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.

Commencement Information

I50 Sch. 11 para. 50 in force at 10.10.2019, see [art. 1](#)

Acquisition of land

51. 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 apparatus or extinguish any easement or other interest of the solar operator otherwise than by agreement (such agreement not to be unreasonably withheld).

Commencement Information

I51 Sch. 11 para. 51 in force at 10.10.2019, see [art. 1](#)

Access

52. If in consequence of the agreement reached in accordance with paragraph 51 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the solar operator to maintain or use the apparatus no less effectively than was possible before such obstruction.

Commencement Information

I52 Sch. 11 para. 52 in force at 10.10.2019, see [art. 1](#)

Apparatus in streets subject to temporary prohibition or restriction

53. 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), the solar operator 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.

Commencement Information

I53 Sch. 11 para. 53 in force at 10.10.2019, see [art. 1](#)

Specified Works

54.—(1) Not less than 28 days before starting the execution of any specified work in, on or under any land purchased, leased, held, appropriated or used under this Order that are within 6 metres of any apparatus, or will or may affect any apparatus, the undertaker must submit to the solar operator a plan, section and description of the specified works 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 (3) by the solar operator for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the solar operator is entitled to watch and inspect the execution of those specified works.

(3) 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.

(4) 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 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.

(5) 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.

Commencement Information

I54 Sch. 11 para. 54 in force at 10.10.2019, see [art. 1](#)

Expenses and costs

55. The undertaker must pay to the solar operator the reasonable expenses incurred by the solar operator in, or in connection with, the inspection, alteration or protection of any apparatus which may be required in consequence of the execution of any specified work.

Commencement Information

I55 Sch. 11 para. 55 in force at 10.10.2019, see [art. 1](#)

56.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus, 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 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.

(4) The solar operator must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph 56 applies. If requested to do so by the undertaker, the solar operator shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 56 for claims reasonably incurred by the solar operator.

Commencement Information

I56 Sch. 11 para. 56 in force at 10.10.2019, see [art. 1](#)

Expert determination

57.—(1) Article 42 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who

holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

Commencement Information

I57 Sch. 11 para. 57 in force at 10.10.2019, see [art. 1](#)

PART 7

FOR THE PROTECTION OF WALES & WEST UTILITIES LIMITED

Application

58. For the protection of the protected person referred to in this Part 7 of Schedule 11 the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person, have effect.

Commencement Information

I58 Sch. 11 para. 58 in force at 10.10.2019, see [art. 1](#)

Interpretation

59.—(1) In this Part of this Schedule—

“apparatus” means in the case of the protected person, pipes or other apparatus belonging to or maintained by Wales & West Utilities Limited for the purposes of gas transmission and distribution;

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

“commence” has the same meaning as in article 2 (interpretation) and commencement shall be construed to have the same meaning;

“functions” includes powers and duties;

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

“maintain” and “maintenance” shall have the same meaning as in article 2 (interpretation);

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

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

“protective works” means such works as are necessary to protect the protected person’s apparatus arising as a result of the construction, operation or maintenance of the authorised development.

(2) Except for paragraphs 62 (retained apparatus: Protection: Protected Persons) and 63 (expenses) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

Commencement Information

I59 Sch. 11 para. 59 in force at 10.10.2019, see [art. 1](#)

Apparatus of the protected person in streets subject to temporary prohibition or restriction

60. Notwithstanding the temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction of use of streets), the protected person 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.

Commencement Information

I60 Sch. 11 para. 60 in force at 10.10.2019, see [art. 1](#)

Acquisition of Land

61. 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 the protected person otherwise than by agreement (such agreement not to be unreasonably withheld).

Commencement Information

I61 Sch. 11 para. 61 in force at 10.10.2019, see [art. 1](#)

Retained apparatus: Protection: Protected Persons

62.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works that are within 24 metres of any apparatus the undertaker must submit to the protected person in question a plan. For the avoidance of doubt, there is no requirement for any plan submitted by the undertaker under this sub-paragraph to be approved by the protected person.

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

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

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

(4) Any approval of the protected person required under sub-paragraph (3)—

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

(5) In relation to a work to which sub-paragraphs (1) and (2) apply, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the protection of the apparatus, for securing access to the apparatus, and the protected person shall be entitled to watch and inspect the execution of this works. In the event of unforeseen circumstances occurring during the execution of the works, the undertaker and protected person must work together, acting reasonably, to resolve the issue in the interests of the protection of both parties' assets.

(7) Where protected persons require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried

out to the protected persons' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and the protected person will give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) (except in an emergency).

(8) Nothing in this paragraph will preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works comprising the authorised development (and to which sub-paragraph (1) applies), 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.

(9) 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 shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (10) at all times.

(10) At all times when carrying out any works authorised under the Order comply with Wales & West Utilities Limited's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of pipelines and associated installation operating above 2 BAR's" and HSE's "HSG47 Avoiding Danger from underground services" or any other safe working policies issued by Wales & West Utilities Limited's Plant Protection department prior to the date of any relevant approval given by the protected person pursuant to sub-paragraph (3).

Commencement Information

I62 Sch. 11 para. 62 in force at 10.10.2019, see [art. 1](#)

Expenses

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

- (a) the approval of plans;
- (b) the carrying out of protective works (including any temporary protective works and their removal);
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) The undertaker will not be liable to the protected person pursuant to sub-paragraph (1) unless the protected person has submitted to and agreed with the undertaker details of the works required unless such works are required in an emergency.

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

(4) The protected person must use its reasonable endeavours to minimise any charges, costs and expenses to which this paragraph 63 applies. If requested to do so by the undertaker, the protected person shall provide evidence of the charges, costs and expenses, and an explanation of how the same has been minimised. The undertaker shall only be liable under this paragraph 63 for amounts reasonably incurred by the protected person.

Commencement Information

I63 Sch. 11 para. 63 in force at 10.10.2019, see [art. 1](#)

Indemnity

64.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this part of 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 Order, any material damage is caused to any apparatus or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker must—

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

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

(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 the protected person, its officers, servants, contractors or agents or is otherwise caused by or is attributable to the protected person; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by the protected person 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 7 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 3(b) shall be subject to the full terms of this Schedule including this paragraph 64 in respect of such new apparatus.

(4) The protected person must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise will be made without first consulting the undertaker and taking into account its representations.

(5) The protected person must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph 64 applies. If

requested to do so by the undertaker, the protected person shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 64 for claims reasonably incurred by the protected person.

Commencement Information

I64 Sch. 11 para. 64 in force at 10.10.2019, see [art. 1](#)

Enactments and agreements

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

Commencement Information

I65 Sch. 11 para. 65 in force at 10.10.2019, see [art. 1](#)

Co-operation

66. The protected person and the undertaker must use all reasonable endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party's operations.

Commencement Information

I66 Sch. 11 para. 66 in force at 10.10.2019, see [art. 1](#)

Access

67. If in consequence of the agreement reached in accordance with paragraph 62 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Commencement Information

I67 Sch. 11 para. 67 in force at 10.10.2019, see [art. 1](#)

Arbitration

68. Any difference or dispute arising between the undertaker and the protected person under this Schedule will, unless otherwise agreed in writing between the undertaker and the protected person, be determined by arbitration in accordance with article 42 (arbitration).

Changes to legislation: There are currently no known outstanding effects for the The Abergelli Power Gas Fired Generating Station Order 2019, SCHEDULE 11. (See end of Document for details)

Commencement Information

I68 Sch. 11 para. 68 in force at 10.10.2019, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Abergelli Power Gas Fired Generating Station Order 2019, SCHEDULE 11.