



Awel y Môr Offshore Wind Farm

Draft Development Consent Order

Date: April 2022

Revision: D

Application Reference: 3.1

Pursuant to: APFP Regulation 5(2)(b)



REVISION	DATE	STATUS/ REASON FOR ISSUE	AUTHOR:	CHECKED BY:	APPROVED BY:
A	August 2021	Consultation	Burges Salmon	Burges Salmon	
B	January 2022	Planning Inspectorate Review	Burges Salmon	Burges Salmon	
C	April 2022	Pre- Application review	Burges Salmon	Burges Salmon	
D	April 2022	Application	Burges Salmon	Burges Salmon	

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202[] No.

INFRASTRUCTURE PLANNING

The Awel y Môr Offshore Wind Farm Order 202[●]

Made - - - - - ***

Laid before Parliament ***

Coming into force ***

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

The application was examined by [a single appointed person] [a panel of ● members] (appointed by the Secretary of State) in accordance with Part 6 of the 2008 Act and carried out in accordance with the Infrastructure Planning (Examination Procedure) Rules 2010(b).

The [single appointed person] [panel], having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section [83(1) [74(2)]] of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State has considered the [representations made and not withdrawn], and the report and recommendation of the [single appointed person] [panel], has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(c), and, as a national policy statement as effect in relation to the proposed development, has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

[The Secretary of State is satisfied that the open space forming special category land specified in the land plans and special category land plans (as defined in article 2 of this Order) as “acquisition of permanent new rights” land , when burdened with any new rights authorised to be compulsorily

(a) 2008 c.29. Section 37 was amended by section 128(2) and Schedule 13, Part 1, paragraphs 1 to 5 of the Localism Act 2011 (c.20).
(b) S.I. 2010/103. This instrument was amended by S.I. 2012/635
(c) S.I. 2017/572.

acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.]

[The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections [114, 115, 120 and 132, and schedule 5] to the 2008 Act, makes the following Order:

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Awel y Môr Offshore Wind Farm Order 202[•] and comes into force on [•] 202[•].

Interpretation

2.—(1) In this order—

“1961 Act” means the Land Compensation Act 1961(a);

“1965 Act” means the Compulsory Purchase Act 1965(b);

“1980 Act” means the Highways Act 1980(c);

“1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“1989 Act” means the Electricity Act 1989(e)

“1990 Act” means the Town and Country Planning Act 1990(f);

“1991 Act” means the New Roads and Street Works Act 1991(g);

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

“2004 Act” means the Energy Act 2004 (i);

“2008 Act” means the Planning Act 2008;

“2009 Act” means the Marine and Coastal Access Act 2009(j);

“address” includes any number or address used for the purposes of electronic transmission;

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (ancillary works) and any other works authorised by this Order that are not development within the meaning of section 32 of the 2008 Act;

“apparatus” has the same meaning as in section 105(1) of the 1991 Act;

(a) 1961 c33.

(b) 1965 c56.

(c) 1980 c66.

(d) 1981 c66.

(e) 1989 c29.

(f) 1990 c8.

(g) 1991 c.22.

(h) 2003 c21.

(i) 2004 c.20 Section 105 was amended by section 69 of the Energy Act 2008 (c.32)

(j) 2009 c.23.

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

“bank holiday” means a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(a);

“book of reference” means the document certified as such by the Secretary of State under article 40 for the purposes of this Order;

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

“buoy” means any floating device used for navigational purposes or measurement purposes, including wave buoys, LiDAR and guard buoys;

“business day” means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales;

“cable” means up to 400kV cables for the transmission of electricity and includes direct lay cables, cables laid in cable ducts or protective covers, and further includes fibre optic and other communications cables either within the cable or laid alongside;

“cable circuits” means a number of electrical conductors necessary to transmit electricity between two points within the authorised development comprising up to 3 electrical conductors, which may be attached together or take the form of single cables, and in either case the circuit may include one or more auxiliary cables for the purpose of control, monitoring, protection or general communications;

“cable crossings” means the crossing of existing sub-sea cables, pipelines or other existing infrastructure by the cables authorised by this Order together with cable protection;

“cable ducts” means conduits for the installation of cables;

“cable protection” means measures to protect cables from physical damage including but not limited to concrete mattresses, with or without frond devices, and/or rock placement, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices and rock and gravel burial;

“cable sealing end compound” means a compound containing electrical equipment (including sealing ends, post insulators and earth switches), access, fencing and other associated equipment, structures or buildings;

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

“commence” means carry out a material operation, as defined in section 155 of the 2008 Act comprised in or for the purposes of the authorised development other than onshore site preparation works and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“the design principles document” means the document certified as such by the Secretary of State under article 40 for the purposes of this Order

“electronic transmission” means a communication transmitted—

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

“environmental statement” means the document certified as such by the Secretary of State under article 40 for the purposes of this Order;

“foundation” means any of; a monopile, multi-leg pin-piled jacket, mono suction caisson, multi-leg suction caisson jacket, mono gravity based system or multi-leg gravity based system jacket;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete with a base which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

(a) 1971 c80

“highway authority” means in relation to the A55, the Welsh Ministers, and in relation to any other highway Denbighshire County Council;

“horizontal directional drilling compound” means a construction site associated with the cable or cable circuit works where horizontal directional drilling or other trenchless construction technique is proposed including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bundled storage areas, areas comprising water and bentonite tanks, pumps and pipes, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“inter-array cables” means the cables linking the wind turbine generators to each other and to the other offshore works;

“jacket foundation” means a steel jacket/lattice -type structure constructed of steel, fixed to the seabed with steel pin piles or steel suction buckets and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

“joint bay” means an excavation formed to enable the jointing of the cables;

“jointing works” means a process by which two or more cables are connected to each other by means of cable joints within a joint bay;

“the land plans” means the document certified as such by the Secretary of State for the purposes of this Order under article 40;

“LAT” means lowest astronomical tide;

“LiDAR” means a light detection and ranging system used to measure weather and sea conditions;

“maintain” includes inspect, repair, adjust or alter the authorised development, and remove, reconstruct or replace any part, provided that such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of “maintain” is to be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“mean low water springs” or “MLWS” means the average height of all low waters above Chart Datum;

“monopile foundation” means a steel or concrete pile, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

“offshore platforms” means the offshore structures housing or incorporating electrical equipment such as switchgear and transformers and high voltage reactive controls, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, vessel charging facilities, communication and control systems, auxiliary and uninterruptible power supplies, energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore works” means Work Nos. 1, 1A, 2, 2A, 3 and 3A and any related further associated development in connection with those Works;

“onshore substation” means a HVAC substation compound sited at Bodelwyddan containing electrical equipment (including power transformers, gantries, switchgear, reactive compensation equipment, electrical protection equipment devices (disconnectors, circuit breakers), cooling, harmonic filters, cables and back-up generators), control buildings, lightning protection masts, communications masts, access including internal roads, fencing and other associated equipment, structures or buildings;

“onshore works” means Work Nos. 4 to 41 inclusive and any related further associated development in connection with those Works;

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

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

“the outline code of construction practice” means the document certified as such by the Secretary of State under article 40 for the purposes of this Order;

“the outline drainage strategy” means the document certified as such by the Secretary of State under article 40 for the purposes of this Order

“the outline landscape and ecological management plan” means the document certified as such by the Secretary of State under article 40 for the purposes of this Order;

“the outline written scheme of archaeological investigation” means the document certified as such by the Secretary of State under article 40 for the purposes of this Order;

“the outline marine written scheme of archaeological investigation” means the document certified as such by the Secretary of State under article 40 for the purposes of this Order;

“pin piles” means steel or concrete cylindrical piles driven and/or drilled into the seabed to secure steel jacket foundations;

“the preliminary navigational risk assessment” means the document certified as such by the Secretary of State for the purposes of this Order under article 40;

“relevant planning authority” means Denbighshire County Council

“requirements” means those matters set out in Part 1 of Schedule 2 (Requirements) to this Order;

“scheduled works” means the numbered works specified in Part 1 of Schedule 1 (authorised development) to this Order, or any part of them;

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

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

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

“the street works and access plan ” means the plans certified as such by the Secretary of State under article 40 for the purposes of this Order;

“suction caisson foundation” means a tubular steel structure which partially or fully penetrates the seabed and associated equipment, including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

“the temporary stopping up of public rights of way plan” means the plan certified as such by the Secretary of State under article 40 for the purposes of this Order;

“trenchless installation techniques” means the installation of electrical circuits and/or cables by means of boring techniques for installing cable ducts including horizontal directional drilling, pipe jacking/horizontal auger boring and micro-boring;

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

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means Awel y Môr Offshore Windfarm Limited, incorporated under company number 12270928 and having its registered office at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, United Kingdom, SN5 6PB ;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

(a) Section 48 was amended by section 124 (1) and (2) of the Local Transport Act 2008 (c.26).

(b) “Street authority” is defined in section 49, which was amended by section 1(6) and paragraphs 113 and 117 of Schedule 1 to the Infrastructure Act 2015.

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment including communications equipment, fixed to a foundation or transition piece; and

“works plans” means the plan or plans certified as such by the Secretary of State under article 40 for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

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

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

PART 2

Principal Powers

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—

(a) development consent for the authorised development; and

(b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to the requirements, the offshore works must be constructed within the Order limits seaward of MHWS and the onshore works must be constructed within the Order limits landward of MLW.

Operation of generating station

4.—(1) The undertaker is authorised to use and operate the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any legislation that may be required from time to time to authorise the operation of the authorised development.

Power to maintain the authorised development

5.—(1) Subject to paragraph 2, the undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act (marine licensing) for the offshore works.

Benefit of the Order

6.—(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

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

(3) Where this paragraph applies, no consent of the Secretary of State is required. This paragraph applies where—

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

(4) Where an agreement has been made in accordance with paragraph (3) references in this Order to the undertaker, will include references to the transferee or lessee.

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

(6) Where paragraph (3) applies, the undertaker must provide written notification to the Secretary of State and the relevant planning authority at least 14 days prior to transferring and/or granting any benefit.

Application and modification of legislative provisions

7. The following enactments do not apply in relation to the construction of any work or the carrying out of any operation for the purpose of or in connection with, the construction of the authorised development or any maintenance of any part of the authorised development —

- (a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991(a);

(a) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(a);
- (c) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b) in respect of a flood risk activity (including works affecting sea defences) only;
- (d) sections 23 and 30 of the Land Drainage Act 1991(c); and
- (e) the provisions of the Neighbourhood Planning Act 2017(d) in so far as they relate to the temporary possession of land under articles 27 and 28 of this Order.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(e) in relation to a nuisance falling within paragraphs (d), (fb), (g) and (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(f);
- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site) of the Control of Pollution Act 1974(g) does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

PART 3

Streets

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus under the street;

-
- (a) As substituted by section 31 of, and paragraphs 25 and 38 of Schedule 2 to the Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).
 - (b) 2016/1154
 - (c) 1991 c. 59
 - (d) 2017 c.20
 - (e) 1990 c 43. Relevant amendments are as follows: section 82 was amended by section 107 and Schedule 17 paragraph 6 of the Environment Act 1995 (c.25) and section 5(2) of the Noise and Statutory Nuisance Act 1993 (c.40), and section 79 was amended by sections 101 and 102 of the Clean Neighbourhoods and Environment Act 2005 (c.16), by section 2 of the Noise and Statutory Nuisance Act 1993 and by section 120 and Schedule 22 paragraph 89 of the Environment Act 2005.
 - (f) 1974 c.40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c.55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995. There are other amendments to the 1974 Act which are not relevant to the Order.
 - (g) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c .55), paragraph 15 of Schedule 3 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

- (d) maintain apparatus under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

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

Application of the 1991 Act

10.—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under article 9 (street works); and
 - (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 12 (temporary restriction of use of streets).
- whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act^(a) are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs(a) to (g).

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(4) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56(d) (power to give directions as to timing of street works);
- (b) section 56A(e) (power to give directions as to placing of apparatus);
- (c) section 58(f) (restriction on works following substantial road works);
- (d) section 58A(g) (restriction on works following substantial street works);
- (e) section 61(protected streets); and
- (f) schedule 3A(h) (restriction on works following substantial street works).

Temporary stopping up of rights of way

11.—(1) The undertaker may, in connection with the carrying out of the authorised development, temporarily stop up each of the public rights of way specified in column (2) of Schedule 4 (rights of way to be temporarily stopped up or restricted) to the extent specified in column (3), by reference to the letters shown on the temporary stopping up of rights of way plan.

(2) The rights of way specified in Schedule 4 (rights of way to be temporarily stopped up or restricted) may not be temporarily stopped up under this article unless an diversion for the stopped ups section of that right of way, is first provided by the undertaker to the standard defined in the

(a) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c.18)

public access management plan forming part of the code of construction practice to be approved in accordance with the requirements set out in Schedule 2, to the reasonable satisfaction of the highway authority.

(3) The relevant diversion route provided under paragraph (2) will be subsequently maintained by the undertaker until the re-opening of the relevant right of way specified in paragraph (1).

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

Temporary restriction of use of streets

12.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

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

(2) Without limiting paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.

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

(4) The undertaker must not temporarily stop up or use as a temporary working site any street without the consent of the street authority, which may attach reasonable conditions to the consent.

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

(6) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5), that street authority is deemed to have granted consent.

Access to works

13. The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access for the purposes of the authorised development within the Order limits from the streets listed in Schedule 5 (Access to works) and shown on the street works and access plan; and as part of Work No.41.

PART 4

Supplemental powers

Discharge of water

14.—(1) Subject to paragraphs (3) and (4) below the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may inspect, lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to

(a) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c.37) and section 32, Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 c.29.

such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to paragraph (1) except—

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

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works in, under, over or within eight metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of Natural Resources Wales.

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, Natural Resources Wales, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

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

Authority to survey and investigate the land

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

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

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

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) S.I. 2016/1154.

- (a) in land located within the highway boundary without the consent of the highway authority;
or
- (b) in a private street without the consent of the street authority,
but such consent must not be unreasonably withheld or delayed

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(c) in the case of a highway authority; or
 - (b) under paragraph (4)(d) in the case of a street authority;
- that authority is deemed to have granted consent.

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

Protective work to buildings

16.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised development first becomes operational.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the power and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or

expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 44 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the day on which the part of the authorised development carried out in the vicinity of the building first becomes operational it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,
the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies in respect of the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the carrying out, maintenance or use of the authorised development.

Removal of human remains

17.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains in the Order land it must remove those human remains from the Order land, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order land the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within fifty-six days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specific land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be;

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10) and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of fifty-six days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land; or
- (b) such notice is given and no application is made under paragraph (6) within fifty-six days after the giving of the notice but the person who has given the notice fails to remove the remains within a further period of fifty-six days; or
- (c) within fifty-six days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9), the undertaker must remove the remains and cause them to be re-interred in such burial ground, or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) is not to apply to a removal carried out in accordance with this article.

(a) 1857 c.81

PART 5

Powers of Acquisition

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development.

(2) This article is subject to paragraph (2) of article 20 (compulsory acquisition of rights) and paragraph (8) of article 27 (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

19.—(1) After the end of the period of 7 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 (determination of questions of disputed compensation) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act^(a) as applied by article 23 (application of the 1981 Act).

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

Compulsory acquisition of rights

20.—(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) Subject to articles 22 (private rights) and 29 (statutory undertakers) in the case of the Order land specified in column (1) of Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 10 of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph(1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

(a) Section 4 was amended by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c.22).

Compulsory acquisition of land: minerals

21. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order, subject to the following modifications—

- (a) paragraph 8(3) is not incorporated;
- (b) for “acquiring authority” substitute “undertaker”; and
- (c) for “undertaking” substitute “authorised development”.

Private rights

22.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 18 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 18 (compulsory acquisition of land)—

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 18 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earlier.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

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

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker’s appropriation of the land;
 - (iii) the undertaker’s entry onto the land; or
 - (iv) the undertaker’s taking temporary possession of the land;
- that any or all of those paragraphs do not apply to any right specified in the notice; or

(a) Section 11(1) was amended by sections 186 to 188 of the Housing and Planning Act 2016 (c.22), Schedule 4 to the Acquisition of Land Act 1981 (c.67) a

- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (7) If an agreement referred to in paragraph (6)(b)—
 - (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.
- (8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the 1981 Act

- 23.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied, has effect with the following modifications.
 - (3) In section 1 (application of Act) for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
 - (4) Omit section 5 (earliest date for execution of declaration).
 - (5) Omit section 5A (time limit for general vesting declaration).
 - (6) In section 5B(1) (extension of time limit during challenge)—
 - (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 5A” substitute “the seven year period mentioned in article 19 of the Awel y Môr Offshore Wind Farm Order 202[•]”.
 - (7) In section 6 (notices after execution of declaration) for subsection (1)(b) substitute—

“on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008,”.
 - (8) In section 7 (constructive notice to treat) in subsection (1)(a) omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
 - (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute –
 - (a) “But see article 24 (acquisition of subsoil only) of the Awel y Môr Offshore Wind Farm Order 202[•] which excludes the acquisition of subsoil from this Schedule”.
 - (10) References to the 1965 Act in the 1981 Act are to be constructed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 25 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of the land under this Order.

Acquisition of subsoil only

- 24.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraph (1) of article 20 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.
- (2) Where the undertaker acquires any part of, or rights in the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 25 or paragraph 10 of Schedule 8 as the case may be) from applying where the undertaker acquires any part of, or rights in a cellar, vault, arch or other construction forming part of a house, building or factory.

(4) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 25 (modification of Part 1 of the 1965 Act);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as set out in paragraphs (2) to (5).

(2) In section 4A(1) (extension of time limit during challenge)(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the seven year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of The Awel y Môr Wind Farm Order 202[●]”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 19 (time limit for exercise of authority to acquire land compulsorily) of The Awel y Môr Offshore Wind Farm Order 202[●]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) —

- (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 26(3) (acquisition of subsoil only) of The Awel y Môr Offshore Wind Farm Order 202[●] which excludes the acquisition of subsoil only from this Schedule”; and
- (b) at the end insert—

“Part 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 16 (protective work to buildings), article 27 (temporary use of land for carrying out the authorised development) or article 28 (temporary use of land for maintaining the authorised development) of The Awel y Môr Offshore Wind Farm Order 202[●]”.

Rights under or over streets

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

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

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

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

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

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

Temporary use of land for carrying out the authorised development

27.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 19 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 6 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised development; and
- (e) construct any permanent works specified in relation to that land in column (3) of Schedule 6 (land of which only temporary possession may be taken), or any other mitigation works in connection with the authorised development.

(2) Not less than 3 months before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

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

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 6 (land of which only temporary possession may be taken); or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works (including ground strengthening works) have been constructed under paragraph (1)(e); or
- (c) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

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

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

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

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights over any part of that land under article 20 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 24 (acquisition of subsoil only).

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

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

(11) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 18 (compulsory acquisition of land) or article 20 (compulsory acquisition of rights).

Temporary use of land for maintaining the authorised development

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

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

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

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

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

(a) Section 13 was amended by Tribunals Courts and Enforcement Act 2007 (c.15)

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

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

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

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

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

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

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

(11) In this article "the maintenance period", in relation to any part of the authorised development means the period during which the authorised development exports electricity to the national electricity transmission network

Statutory undertakers

29. Subject to the provisions of Schedule 9 (protective provisions) the undertaker may—

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

Recovery of costs of new connections

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

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

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
 - (b) the owner of a private sewer which communicated with that sewer,
- is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this paragraph—

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

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

Funding

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

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 20 (compulsory acquisition of rights);
- (c) article 22 (private rights);
- (d) article 24 (acquisition of subsoil only);
- (e) article 27 (temporary use of land for carrying out the authorised development);
- (f) article 28 (temporary use of land for maintaining the authorised development); and
- (g) article 29 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

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

PART 6

Miscellaneous and general

Application of landlord and tenant law

32.—(1) This article applies to any agreement entered into by the undertaker under article 6 (benefit of Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

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

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(a) 2003 c.21.

- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Felling or lopping of trees and removal of hedgerows

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

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub; and
- (b) pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(a).

Trees subject to tree preservation orders

34.—(1) Subject to paragraph (2), the undertaker must not fell or lop or cut back the roots of any tree which is the subject of a tree preservation order.

(2) The undertaker may fell or lop any tree within or encroaching upon the Order limits that is subject to a tree preservation order which was made after [•], or cut back its roots, if it reasonably believes it to be necessary in order to do so in order to prevent the tree —

- (a) from obstructing or interfering with onshore site preparation works the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting an unacceptable source of danger (whether to children or to other persons).

(3) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must not cause unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) of the 1990 Act does not apply.

(4) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(5) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(a) S.I 1997/1160

Abatement of works abandoned or decayed

35. Where any of the offshore works or any part of them is abandoned or allowed to fall into decay, the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense either to repair, make safe and restore one or any of those works, or remove Work No. 1 or any relevant part of it, without prejudice to any notice served under section 105(2) of the 2004 Act^(a). The notice may also require the restoration of the site of the relevant part(s) of Work No 1.

Saving provisions for Trinity House

36. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown rights

37.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

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

Protective provisions

38. Schedule 9 (protective provisions) has effect.

Operational land for the purposes of the 1990 Act

39. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

Certification of plans, etc.

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

- (a) the land plans (document numbers 2.2 (offshore) and 2.3 (onshore, consisting of a key plan and sheets 1 to 10 inclusive));
- (b) the works plans (document number 2.5);
- (c) the book of reference (document number 4.3);
- (d) the environmental statement (document number 6);
- (e) the design principles document (document number 8.8);

(a) Section 105(2) was substituted by section 69(3) of the Energy Act 2008 (c.32).

- (f) the outline code of construction practice (document number 8.13);
- (g) outline drainage strategy (forming part of document number 6.5.7.2);
- (h) the outline landscape and ecological management plan (document number 8.4);
- (i) the outline written scheme of archaeological investigation, (document number 8.14);
- (j) the outline marine written scheme of archaeological investigation (document number 8.3);
- (k) the preliminary navigational risk assessment (document number 6.4.9.1);
- (l) the street works and access plan; (document number 2.6); and
- (m) the temporary stopping up of public rights of way plan (document number 2.7);

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

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

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

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

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

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(a) 1978 c. 30.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

No double recovery

42. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Requirements, appeals, etc.

43.—(1) Sub-section (1) of section 78 (right to appeal against planning decisions and failure to take such decision) of the 1990 Act applies to the development consent granted by this Order and to the requirements except that it is modified so as to read for the purposes of this Order only as follows—

- (a) after “local planning authority” insert “or Secretary of State”
- (b) after subsection (b) insert the following—

“refuse or fails to determine an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions; or”

- (c) after Sub-section (1), insert the following—

“(1A) Where the appeal under sub-section (1) relates to a decision by the Secretary of State, the appeal will be decided by a Secretary of State who would not be responsible for determining an application for development consent with the subject matter of The Awel y Môr Offshore Wind Farm Order 202[] section 103(1) of the 2008 Act applied.”

(2) Sections 78 and 79 (determination of appeals) of the 1990 Act have effect in relation to any appeal under the terms of this article except that the Secretary of State in question is the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order if section 103(1) of the 2008 Act applied

Arbitration

44.—(1) Any difference under any provision of this Order, unless otherwise provided for, is be referred to and settled in arbitration in accordance with the rules at Schedule 12 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

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

Date

Signed
Title
Department

SCHEDULE 1

Articles 3 and 4

AUTHORISED DEVELOPMENT

PART 1

Authorised development

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act which is located in the Irish Sea approximately 11 kilometres from the coast of North Wales and, comprising—

Work No. 1—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of over 350 megawatts, comprising up to 50 wind turbine generators each fixed to the seabed by a foundation, and further comprising (b) to (f) below;
- (b) up to two offshore substation platforms each fixed to the seabed by a foundation;
- (c) one meteorological mast fixed to the seabed by a foundation;
- (d) floating buoys;
- (e) installation of subsea cable circuit to the Gwynt y Môr Offshore Wind Farm including cable crossings and cable protection; and
- (f) a network of subsea inter-array cables between (a), (b), (c), (d) and (e) including cable crossings and cable protection;

and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising—

Offshore

Work No. 1A – Installation of a subsea cable circuit to the Gwynt y Môr Offshore Wind Farm, and alteration of existing scour protection, cable protection and cable crossings.

Work No. 2 - Installation of up to two subsea cable circuits between Work No. 1 and Work No. 3 including up to 3 cable ducts (if required), cable protection and cable crossings.

Work No. 2A – Cofferdam works including piling and creation of pits for trenchless installation techniques.

Intertidal

Work No. 3 —

- (a) installation of up to two subsea cable circuits between Work No. 2 and Work No. 4 including up to 3 cable ducts (if required), cable protection and cable crossings;
- (b) cofferdam works including piling and creation of pits for trenchless installation techniques, trenchless installation technique works including the creation of entrance and exit pits;
- (c) removal and remediation of groynes; and
- (d) construction and use of haul roads, temporary construction working areas, cable installation vessel anchoring and laydown area.

Work Nos. 1, 1A, 2, 2A and 3 are to be constructed seaward of MHWS within the area delineated by the co-ordinates shown on the order limits plan and listed in the Table 1 below, and within the area for each Work No as shown on the works plans —

Table 1

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
A	53° 19' 55.632" N	3° 27' 29.836" W	DO	53° 23' 31.949" N	3° 35' 38.672" W

B	53° 19' 55.945" N	3° 27' 29.951" W	DP	53° 23' 31.949" N	3° 35' 38.672" W
C	53° 19' 56.257" N	3° 27' 30.066" W	DQ	53° 23' 31.032" N	3° 35' 38.986" W
D	53° 19' 56.328" N	3° 27' 30.101" W	DR	53° 23' 30.345" N	3° 35' 39.139" W
E	53° 19' 56.518" N	3° 27' 30.163" W	DS	53° 23' 29.991" N	3° 35' 39.228" W
F	53° 19' 56.612" N	3° 27' 30.596" W	DT	53° 23' 29.668" N	3° 35' 39.293" W
G	53° 19' 58.329" N	3° 27' 39.872" W	DU	53° 23' 29.586" N	3° 35' 39.308" W
H	53° 20' 0.988" N	3° 27' 51.043" W	DV	53° 23' 29.504" N	3° 35' 39.342" W
I	53° 20' 5.297" N	3° 28' 7.138" W	DW	53° 23' 29.303" N	3° 35' 39.410" W
J	53° 20' 25.901" N	3° 29' 5.762" W	DX	53° 23' 29.168" N	3° 35' 39.462" W
K	53° 20' 36.694" N	3° 30' 1.622" W	DY	53° 23' 29.052" N	3° 35' 39.498" W
L	53° 20' 46.394" N	3° 31' 35.287" W	DZ	53° 23' 28.933" N	3° 35' 39.536" W
M	53° 20' 49.936" N	3° 32' 9.242" W	EA	53° 23' 28.843" N	3° 35' 39.563" W
N	53° 22' 13.322" N	3° 34' 50.660" W	EB	53° 23' 28.739" N	3° 35' 39.595" W
O	53° 22' 57.891" N	3° 36' 25.948" W	EC	53° 23' 28.610" N	3° 35' 39.635" W
P	53° 23' 3.750" N	3° 36' 33.907" W	ED	53° 23' 28.566" N	3° 35' 39.648" W
Q	53° 23' 7.836" N	3° 36' 38.670" W	EE	53° 23' 28.538" N	3° 35' 39.708" W
R	53° 23' 12.456" N	3° 36' 42.877" W	EF	53° 23' 28.476" N	3° 35' 39.835" W
S	53° 23' 16.679" N	3° 36' 47.018" W	EG	53° 23' 28.406" N	3° 35' 39.972" W
T	53° 23' 20.771" N	3° 36' 50.708" W	EH	53° 23' 28.341" N	3° 35' 40.094" W
U	53° 23' 24.867" N	3° 36' 53.753" W	EI	53° 23' 28.065" N	3° 35' 40.557" W
V	53° 23' 28.703" N	3° 36' 55.682" W	EJ	53° 23' 27.790" N	3° 35' 40.945" W
W	53° 23' 31.952" N	3° 36' 56.141" W	EK	53° 23' 27.510" N	3° 35' 41.279" W
X	53° 23' 36.191" N	3° 36' 55.987" W	EL	53° 23' 27.258" N	3° 35' 41.535" W
Y	53° 23' 41.939" N	3° 36' 54.250" W	EM	53° 23' 26.964" N	3° 35' 41.787" W
Z	53° 23' 47.153" N	3° 37' 19.726" W	EN	53° 23' 26.554" N	3° 35' 42.063" W
AA	53° 23' 48.621" N	3° 37' 27.527" W	EO	53° 23' 26.289" N	3° 35' 42.201" W
AB	53° 23' 52.897" N	3° 37' 51.226" W	EP	53° 23' 25.801" N	3° 35' 42.378" W
AC	53° 23' 59.322" N	3° 38' 24.148" W	EQ	53° 23' 25.472" N	3° 35' 42.446" W
AD	53° 24' 4.447" N	3° 38' 50.837" W	ER	53° 23' 25.066" N	3° 35' 42.474" W
AE	53° 24' 15.695" N	3° 39' 49.463" W	ES	53° 23' 24.681" N	3° 35' 42.446" W
AF	53° 24' 25.335" N	3° 40' 34.287" W	ET	53° 23' 24.320" N	3° 35' 42.373" W
AG	53° 24' 35.822" N	3° 41' 23.083" W	EU	53° 23' 24.065" N	3° 35' 42.294" W
AH	53° 24' 48.282" N	3° 42' 21.639" W	EV	53° 23' 23.731" N	3° 35' 42.155" W
AI	53° 24' 50.628" N	3° 42' 32.675" W	EW	53° 23' 23.456" N	3° 35' 42.010" W
AJ	53° 24' 57.879" N	3° 43' 8.382" W	EX	53° 23' 23.050" N	3° 35' 41.744" W
AK	53° 25' 6.830" N	3° 43' 52.460" W	EY	53° 23' 22.812" N	3° 35' 41.557" W
AL	53° 25' 17.703" N	3° 44' 43.634" W	EZ	53° 23' 22.566" N	3° 35' 41.337" W
AM	53° 25' 17.755" N	3° 44' 43.879" W	FA	53° 23' 22.431" N	3° 35' 41.205" W
AN	53° 25' 57.179" N	3° 47' 53.309" W	FB	53° 23' 22.278" N	3° 35' 41.045" W
AO	53° 26' 42.823" N	3° 51' 33.278" W	FC	53° 23' 22.095" N	3° 35' 40.838" W
AP	53° 26' 45.641" N	3° 51' 46.880" W	FD	53° 23' 21.633" N	3° 35' 40.229" W
AQ	53° 26' 54.174" N	3° 52' 28.086" W	FE	53° 23' 21.287" N	3° 35' 39.677" W
AR	53° 27' 38.881" N	3° 52' 29.291" W	FG	53° 23' 21.010" N	3° 35' 39.162" W
AS	53° 28' 7.642" N	3° 51' 49.081" W	FH	53° 23' 20.789" N	3° 35' 38.689" W
AT	53° 29' 4.923" N	3° 51' 50.621" W	FI	53° 23' 20.551" N	3° 35' 38.103" W
AU	53° 29' 8.520" N	3° 51' 50.717" W	FJ	53° 23' 12.443" N	3° 35' 20.381" W
AV	53° 29' 14.612" N	3° 51' 50.880" W	FK	53° 23' 8.637" N	3° 35' 12.511" W
AW	53° 29' 16.731" N	3° 51' 50.937" W	FL	53° 22' 43.150" N	3° 34' 19.186" W
AX	53° 29' 16.812" N	3° 51' 44.230" W	FM	53° 21' 32.179" N	3° 32' 5.974" W
AY	53° 29' 16.893" N	3° 51' 37.376" W	FN	53° 21' 19.958" N	3° 31' 41.203" W

AZ	53° 29' 26.671" N	3° 36' 37.688" W	FO	53° 21' 17.634" N	3° 31' 24.571" W
BA	53° 29' 7.091" N	3° 37' 36.682" W	FP	53° 21' 5.930" N	3° 29' 45.736" W
BB	53° 28' 41.909" N	3° 38' 47.993" W	FQ	53° 20' 56.030" N	3° 28' 47.348" W
BC	53° 28' 31.364" N	3° 39' 17.852" W	FR	53° 20' 36.865" N	3° 27' 47.672" W
BD	53° 28' 5.013" N	3° 40' 32.272" W	FS	53° 20' 30.487" N	3° 27' 27.821" W
BE	53° 27' 41.331" N	3° 40' 54.541" W	FT	53° 20' 28.913" N	3° 27' 22.924" W
BF	53° 27' 41.174" N	3° 40' 54.482" W	FU	53° 20' 28.284" N	3° 27' 20.576" W
BG	53° 27' 22.531" N	3° 40' 39.722" W	FV	53° 20' 25.065" N	3° 27' 11.258" W
BH	53° 27' 17.025" N	3° 40' 24.468" W	FW	53° 20' 24.645" N	3° 27' 10.879" W
BI	53° 27' 21.135" N	3° 39' 55.868" W	FX	53° 20' 24.234" N	3° 27' 10.579" W
BJ	53° 27' 4.200" N	3° 39' 43.766" W	FY	53° 20' 23.546" N	3° 27' 10.205" W
BK	53° 26' 57.348" N	3° 39' 24.932" W	FZ	53° 20' 22.500" N	3° 27' 9.485" W
BL	53° 27' 1.452" N	3° 38' 57.762" W	GA	53° 20' 21.070" N	3° 27' 8.778" W
BM	53° 26' 43.034" N	3° 38' 42.126" W	GB	53° 20' 20.421" N	3° 27' 8.446" W
BN	53° 26' 40.501" N	3° 38' 36.583" W	GC	53° 20' 19.233" N	3° 27' 7.662" W
BO	53° 26' 36.948" N	3° 38' 17.216" W	GD	53° 20' 14.496" N	3° 27' 4.914" W
BP	53° 26' 26.587" N	3° 37' 28.603" W	GE	53° 20' 13.313" N	3° 27' 4.260" W
BQ	53° 26' 19.458" N	3° 37' 17.501" W	GF	53° 20' 12.503" N	3° 27' 3.852" W
BR	53° 26' 11.113" N	3° 37' 16.495" W	GG	53° 20' 11.438" N	3° 27' 3.138" W
BS	53° 26' 2.742" N	3° 37' 27.803" W	GH	53° 20' 10.653" N	3° 27' 2.395" W
BT	53° 25' 52.314" N	3° 37' 34.518" W	GI	53° 20' 10.370" N	3° 27' 2.174" W
BU	53° 25' 40.572" N	3° 39' 12.934" W	GJ	53° 20' 10.133" N	3° 27' 1.990" W
BV	53° 25' 55.148" N	3° 39' 50.832" W	GK	53° 20' 10.015" N	3° 27' 1.899" W
BW	53° 25' 57.330" N	3° 39' 56.490" W	GL	53° 20' 9.896" N	3° 27' 1.805" W
BX	53° 25' 59.460" N	3° 40' 2.100" W	GM	53° 20' 9.517" N	3° 27' 1.511" W
BY	53° 25' 59.220" N	3° 40' 8.910" W	GN	53° 20' 9.139" N	3° 27' 1.216" W
BZ	53° 25' 58.980" N	3° 40' 15.720" W	GO	53° 20' 7.783" N	3° 27' 0.353" W
CA	53° 26' 0.000" N	3° 40' 21.930" W	GP	53° 20' 7.700" N	3° 27' 0.300" W
CB	53° 26' 1.020" N	3° 40' 28.140" W	GQ	53° 20' 7.667" N	3° 27' 0.279" W
CC	53° 25' 24.660" N	3° 39' 50.220" W	GR	53° 19' 58.691" N	3° 26' 54.563" W
CD	53° 24' 47.492" N	3° 38' 5.285" W	GS	53° 19' 56.773" N	3° 26' 53.730" W
CE	53° 24' 19.285" N	3° 36' 2.275" W	GT	53° 19' 56.534" N	3° 26' 55.353" W
CF	53° 24' 17.814" N	3° 36' 1.036" W	GU	53° 19' 56.519" N	3° 26' 55.806" W
CG	53° 24' 16.557" N	3° 35' 59.908" W	GV	53° 19' 56.619" N	3° 26' 56.642" W
CH	53° 24' 15.363" N	3° 35' 58.853" W	GW	53° 19' 56.783" N	3° 26' 57.497" W
CI	53° 24' 13.552" N	3° 35' 57.287" W	GX	53° 19' 56.813" N	3° 26' 57.990" W
CJ	53° 24' 11.719" N	3° 35' 55.685" W	GY	53° 19' 56.730" N	3° 26' 58.690" W
CK	53° 24' 10.163" N	3° 35' 54.302" W	GZ	53° 19' 56.576" N	3° 26' 59.328" W
CL	53° 24' 8.373" N	3° 35' 52.701" W	HA	53° 19' 56.323" N	3° 27' 0.482" W
CM	53° 24' 7.431" N	3° 35' 51.914" W	HB	53° 19' 56.229" N	3° 27' 1.003" W
CN	53° 24' 6.484" N	3° 35' 51.299" W	HC	53° 19' 56.132" N	3° 27' 1.535" W
CO	53° 24' 3.796" N	3° 35' 49.371" W	HD	53° 19' 56.002" N	3° 27' 2.093" W
CP	53° 24' 2.816" N	3° 35' 48.598" W	HE	53° 19' 55.789" N	3° 27' 2.859" W
CQ	53° 23' 59.916" N	3° 35' 46.147" W	HF	53° 19' 55.728" N	3° 27' 3.338" W
CR	53° 23' 58.283" N	3° 35' 44.800" W	HG	53° 19' 55.687" N	3° 27' 3.780" W
CS	53° 23' 57.354" N	3° 35' 44.001" W	HH	53° 19' 55.470" N	3° 27' 4.616" W
CT	53° 23' 56.527" N	3° 35' 43.377" W	HI	53° 19' 55.306" N	3° 27' 5.065" W
CU	53° 23' 55.199" N	3° 35' 42.460" W	HJ	53° 19' 55.028" N	3° 27' 5.834" W
CV	53° 23' 54.284" N	3° 35' 41.912" W	HK	53° 19' 54.678" N	3° 27' 6.801" W
CW	53° 23' 53.148" N	3° 35' 41.247" W	HL	53° 19' 54.388" N	3° 27' 7.618" W

CX	53° 23' 51.376" N	3° 35' 40.330" W	HM	53° 19' 53.718" N	3° 27' 9.488" W
CY	53° 23' 49.732" N	3° 35' 39.486" W	HN	53° 19' 53.356" N	3° 27' 10.514" W
CZ	53° 23' 49.017" N	3° 35' 39.032" W	HO	53° 19' 53.108" N	3° 27' 11.257" W
DA	53° 23' 47.978" N	3° 35' 38.813" W	HP	53° 19' 53.060" N	3° 27' 11.401" W
DB	53° 23' 46.007" N	3° 35' 38.265" W	HQ	53° 19' 52.794" N	3° 27' 12.279" W
DC	53° 23' 44.143" N	3° 35' 37.832" W	HR	53° 19' 52.535" N	3° 27' 13.286" W
DD	53° 23' 43.038" N	3° 35' 37.564" W	HS	53° 19' 52.320" N	3° 27' 14.252" W
DE	53° 23' 40.904" N	3° 35' 37.467" W	HT	53° 19' 52.053" N	3° 27' 15.189" W
DF	53° 23' 39.059" N	3° 35' 37.532" W	HU	53° 19' 51.853" N	3° 27' 15.891" W
DG	53° 23' 37.422" N	3° 35' 37.568" W	HV	53° 19' 51.655" N	3° 27' 16.711" W
DH	53° 23' 36.680" N	3° 35' 37.512" W	HW	53° 19' 51.612" N	3° 27' 16.940" W
DI	53° 23' 35.122" N	3° 35' 37.623" W	HX	53° 19' 51.479" N	3° 27' 17.630" W
DJ	53° 23' 33.956" N	3° 35' 38.110" W	HY	53° 19' 51.060" N	3° 27' 20.384" W
DK	53° 23' 33.166" N	3° 35' 38.330" W	HZ	53° 19' 50.908" N	3° 27' 21.432" W
DL	53° 23' 32.792" N	3° 35' 38.469" W	IA	53° 19' 51.878" N	3° 27' 23.232" W
DM	53° 23' 32.678" N	3° 35' 38.498" W	IB	53° 19' 55.387" N	3° 27' 29.746" W
DN	53° 23' 32.384" N	3° 35' 38.575" W			

Intertidal and in the County of Denbighshire:

Work No. 3A – Temporary working area including use for cable installation vessel anchoring.

Work No. 4 – Installation of up to two buried cable circuits with up to 3 cable ducts (if required) between *Work No. 3* and *Work No. 5*; including cable crossings, cable protection, cofferdam works including piling, trenchless installation technique works, creation of pits for trenchless installation techniques; cable trenching works and removal and remediation of groynes, construction of haul road, temporary construction working areas, cable installation vessel anchoring and laydown area.

Work No. 5 - Installation of up to two buried cable circuits with up to 3 cable ducts (if required) between *Work No. 4* and *Work No. 8*; including trenchless installation technique works, and temporary construction working areas and laydown area.

Work No. 6 – Temporary working area including:

- (a) creation of construction access to Works No. 3, 3A, 4, 5 6A and 7 from Rhyl Coast Road, including works to junctions and visibility splays and removal and remediation of groynes; and
- (b) trenchless installation technique works.

Work No. 6A – Within *Work No.6* construction of a temporary construction compound and laydown area.

Work No.7 - Creation of construction and operational access to Works No. 3, 3A, 4, 5, 6 and 6A from Rhyl Coast Road, including works to junctions and visibility splays, and removal and remediation of groynes, construction of a haul road, temporary construction working areas and laydown area.

Work No. 7A – Within *Work No.7*, construction of a temporary construction compound and laydown area.

In the County of Denbighshire;

Work No. 8 - Installation of up to two buried cable circuits with up to 3 cable ducts (if required); and—

- (a) construction of a haul road;
- (b) a temporary construction working area;

- (c) creation and improvement of accesses including works to junctions and visibility splays;
and
- (d) improvement works to existing bridge.

Work No. 8A – within Work No. 8, installation of:

- (a) up to two transition joint bays;
- (b) trenchless installation techniques including the creation of pits; and
- (c) a temporary construction compound;

Work No.9 – Installation of up to two buried cable circuits with cable ducts (if required) between Work No. 8 and Work No. 11 from the south of the landfall to Dyserth Road, approximately 734m; cable ducts, trenchless installation technique pit works including the creation of entrance and exit pits, and cable trenching works. Construction of a haul road, temporary construction accesses and working areas and laydown area, creation and improvement of accesses including works to junctions and visibility splays.

Work No 10 – Creation of construction access, construction of a haul road, temporary construction working areas and laydown, and creation and improvement of accesses to the public highway including works to junctions and visibility splays.

Work No. 10A – within Work No.10, the creation of a temporary construction compound of no more than 10,000 m².

Work No.11 - Installation of up to two buried cable circuits with cable ducts (if required) between Work No. 9 and Work No.15 from Dyserth Road to the A525/A547 highway, approximately 2,467m; including cable ducts, trenchless installation technique pit works including the creation of entrance and exit pits and cable trenching works. Construction of a haul road, temporary construction working areas and laydown area, creation and improvement of accesses including works to junctions and visibility splays.

Work No. 12- Creation of construction access, construction of a haul road, temporary construction working areas and laydown area and works to create a temporary crossing.

Work No. 13 – Creation of construction access, construction of a haul road, temporary construction working areas and laydown area.

Work No.14 - Creation of construction access, construction of a haul road, temporary construction working area and laydown area, and creation and improvement of accesses to the public highway including works to junctions and visibility splays.

Work No.14A - within Work No.14, the creation of a temporary construction compound of no more than 22,500m².

Work No. 15 - Installation of up to two buried cable circuits with cable ducts (if required) between Work No. 11 and Work No.18 from the A525/A547 highway to the river Ffyddion approximately 763m; including cable crossings, trenchless technique pit works including the creation of entrance and exit pits and cable trenching works. Construction of a haul road including watercourse crossing, temporary construction working areas and laydown area, creation and improvement of accesses.

Work No. 16 – Creation of construction access, construction of a haul road, temporary working areas and laydown area, and creation and improvement of accesses to the public highway including works to junctions and visibility splays.

Work No.16A - within Work No. 16, the creation of a temporary construction compound of no more than 10,000m².

Work No.17 - Creation of construction access, construction of a haul road, temporary construction working areas and laydown area to north of the river Clwyd, and creation and improvement of accesses to public highway including works to junctions and visibility splays.

Work No. 18 - Installation of up to two buried cable circuits with cable ducts (if required) between Work No. 15 and Work No.19 from the river Ffyddion to the river Clwyd, approximately 485m; including cable ducts, trenchless technique pit works including the creation of entrance and exit pits and cable trenching works. Construction of a haul road including watercourse crossing, temporary construction working area and laydown area and creation and improvement of accesses.

Work No.19 – Installation of up to two buried cable circuits within cable ducts (if required) between Work No. 18 and Work No.21 from the river Clywd to the A547/Abergele Road approximately 1,003m; including cable ducts, trenchless technique pit works including the creation of entrance and exit pits and cable trenching works. Construction of a haul road, temporary construction working areas and laydown area, creation and improvement of accesses including works to junctions and visibility splays.

Work No 20 – Creation of construction access, construction of a haul road, temporary construction working areas and laydown area to north of the A547/Abergele Road, and creation and improvement of accesses to public highway including works to junctions and visibility splays.

Work No. 20A - With Work No. 20, construction of temporary construction compound of no more than 22,500m².

Work No.21 – Installation of up to two buried cable circuits within cable ducts (if required) between Work No. 19 and Work No.23; from the A547/Abergele Road to Bodelwyddan Road, approximately 1,021m; including cable ducts, trenchless technique pit works including the creation of entrance and exit pits and cable trenching works. Construction of a haul road, temporary construction working areas and laydown area, creation and improvement of accesses including works to junctions and visibility splays.

Work No 22 – Creation of construction access, construction of a haul road, temporary working area and laydown area to the north of Bodelwyddan Road, and creation and improvement of accesses to the public highway including works to junctions and visibility splays.

Work No.22A - with Work No.22, construction of a temporary construction compound of no more than 10,000m².

Work No.23 – Installation of up to two buried cable circuits within cable ducts (if required) between Work No. 21 and Works No.29 from Bodelwyddan Road to the south of the A55 highway, approximately 2,432m; including cable ducts, trenchless technique pit works including the creation of entrance and exit pits and cable trenching works. Construction of a haul road, temporary construction working areas and laydown area. Creation and improvement of accesses including works to junctions and visibility splays.

Work No 24 – Creation of construction access, works to temporarily improve and increase visibility splays for the public highway during construction.

Work No. 25 - Creation of construction access, construction of a haul road, temporary construction working areas and laydown area and improvements to existing bridge.

Work No 26 – Creation of construction access, construction of a haul road, temporary construction working areas and laydown area to the north of the A55 road and creation and improvement of accesses to public highway including works to junctions and visibility splays.

Work No.26A - within Work No.26, the construction of a temporary construction compound of no more than 22,500 m².

Work No.27 - Creation of construction access, construction of a haul road, temporary construction working areas and laydown area and creation and improvement of accesses to the public highway including works to junctions and visibility splays.

Work No.28 – Drainage works including connections to existing drainage and creation of new sustainable drainage including attenuation pond(s).

Work No. 29 - Installation of up to two buried cable circuits with cable ducts (if required) between Work No 23 and Work No. 31 and 31A from south of the A55 highway to the electrical substation approximately []m, including

- (a) cable ducts, trenchless installation technique pit works including the creation of entrance and exit pits and cable trenching works,
- (b) construction of a haul road, temporary construction working areas and laydown area;
- (c) Creation and improvement of accesses including works to junctions and visibility splay;
- (d) permanent landscaping, ecological and environmental works;
- (e) drainage works including connections to existing drainage and creation of new sustainable drainage including attenuation pond(s), and
- (f) utilities connections area.

Work No 30 - an access, drainage and utilities works area comprising;

- (a) temporary construction working areas and laydown areas,
- (b) temporary access roads and haul road including temporary land re-profiling
- (c) drainage works including connections to existing drainage and creation of new sustainable drainage including attenuation pond(s);
- (d) permanent landscaping, ecological and environmental works; and
- (e) utilities connections.

Work No 30A - Within Work No 30, creation of a temporary construction compound and laydown area of no more than 37,500m².

Work No. 31 - creation of the substation compound area including;

- (a) land re-profiling and creation of platform or foundations for Work No 31A;
- (b) security fencing;
- (c) landscaping;
- (d) utilities connections;
- (e) drainage works including connections to existing drainage and creation of new sustainable drainage including attenuation pond(s);
- (f) temporary and permanent access roads;
- (g) temporary construction areas, lay down areas and haul roads;
- (h) installation of up to two buried cable circuits within cable ducts (if required);
- (i) installation of up to two buried 400KV cable circuits within cable ducts (if required);
- (j) cable crossings, cable protection, cable ducts, trenchless installation technique pit works including the creation of entrance and exit pits and cable trenching works; and
- (k) creation of permanent ecological and environmental mitigation works including habitat creation.

Work no 31A – Within Work No 31, construction of electrical substation infrastructure including;

- (a) a compound for electrical works necessary for the onward transmission of electricity (the “substation compound”) containing (but not limited to) switchgear and electrical equipment including power transformers, reactive compensation equipment, filters, cooling equipment, control and welfare buildings, lightning rods, internal roads, security fencing and other associated equipment, structures and buildings including noise-attenuation works; and
- (b) permanent security fencing and security gate.

Work No. 32 - Installation of up to two buried 400KV cable circuits with cable ducts (if required) between Work No. 31 and Work No.36 from the electrical substation to Glascoed Road; including

- (a) cable ducts, trenchless installation technique pit works including the creation of entrance and exit pits and cable trenching works ;
- (b) creation of construction access, construction of a haul road,
- (c) temporary construction working areas and laydown area;
- (d) creation and improvement of accesses including works to junctions and visibility splays;
- (e) permanent landscaping, ecological and environmental works;
- (f) drainage works including connections to existing drainage and creation of new sustainable drainage including attenuation pond(s); and
- (g) utilities connections area.

Work No 33 - an access, drainage and utilities works area comprising;

- (a) temporary construction working areas and laydown area;
- (b) temporary access roads and haul road including temporary land re-profiling;
- (c) permanent access roads and visibility splays;
- (d) permanent landscaping, ecological and environmental works
- (e) drainage works including connections to existing drainage and creation of new sustainable drainage including attenuation pond(s); and
- (f) utilities connections.

Work No. 34 – Creation of new temporary and permanent visibility splays and improvement of existing visibility splays.

Work No 35 - Permanent landscaping, ecological and environmental works, drainage works including connections to existing drainage and creation of new sustainable drainage including attenuation pond(s), and utilities connections.

Work No.36 - Installation of up to two buried 400KV cable circuits with cable ducts (if required) between Work No.32 and Work No. 40 from Glascoed Road to the National Grid substation approximately 912m; including cable ducts, trenchless installation technique pit works including the creation of entrance and exit pits and cable trenching works; construction of a haul road, temporary construction working areas and laydown area, creation and improvement of accesses including works to junctions and visibility splays.

Work No. 37 -

- (a) Creation of construction access, construction of a haul road and temporary construction working areas; and
- (b) creation and improvement of accesses to public highway including works to junctions, creation of a new bellmouth junction and visibility splays.

Work No.37A – Within Work No 37, creation of a temporary construction compound and laydown area of no more than 10,000 m² to the south of Glascoed Road.

Work No. 38 - Creation of construction access, creation and improvement of visibility splays, works to highway verges to improve existing visibility splays.

Work No.39 -

- (a) Creation of construction access, construction of a haul road, temporary construction working areas and laydown area and creation and improvement of accesses to public highway including works to junctions and visibility splays; and
- (b) Creation of permanent access, including works to connect the access to Glascoed Road.

Work No 39A - Within Work No 39, creation of a temporary construction compound and laydown area of no more than 10,000m².

Work No 40 - Electrical works to connect to the National Grid substation-

- (a) works needed to connect the authorised project to the National Grid substation at Bodelwyddan that National Grid is not required, under its transmission licence, to carry out itself including (but not limited to) cabling, cable sealing ends, circuit breakers, surge arrestors, dis-connectors, transformers, busbars and busbar clamp measuring equipment, relay marshalling rooms and electrical earthing works;
- (b) installation of up to two buried 400KV cable circuits with cable ducts (if required) between Work No. 36 and the national grid substation; including cable ducts, trenchless installation technique pit works including the creation of entrance and exit pits and cable trenching works;
- (c) construction of a haul road, temporary construction compound and laydown area; and
- (d) creation of access roads to provide operational and maintenance access.

Work No 41 - Access roads to provide operational access from the public highways to Work Nos. 4 to 40 and any associated development.

and in connection with Work Nos. 1 to 3A and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as rock placement and the placement of rock and/or concrete mattresses, with or without and frond devices;
- (c) dredging;
- (d) the removal of material from the seabed required for the construction of Work Nos. 1 to 3 and the disposal of inert material of natural origin and/or dredged material within the Order limits produced during construction drilling, and seabed preparation for the installation the installation of the foundations of the offshore structures or during seabed preparation for cable laying;
- (e) creation and use of temporary vessel laydown areas, use of cable anchors;
- (f) removal of static fishing equipment;
- (g) lighting; and
- (h) erection of temporary cofferdams during construction

and in connection with Work Nos. 4 to 41 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) haul roads, ramps, watercourse and other temporary crossings, means of access and other vehicular and/or pedestrian means of access, including creation of new tracks and footpaths, and/or widening, upgrades, alterations and improvements of existing roads, tracks and footpaths;
- (b) bunds, embankments, swales, landscaping, fencing and boundary treatments and alteration of groyne;
- (c) provision of temporary and permanent ecological and environmental mitigation and compensation works;
- (d) spoil storage and associated control measures;
- (e) jointing bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable markers, tiles and tape, and lighting and other works associated with laying cables and/or pulling cables through cable ducts;

- (f) works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems, temporary drainage during installations of cables and culverting;
- (g) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (h) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (i) landscaping works and habitat creation;
- (j) works for the benefit or protection of land affected by the authorised development;
- (k) working sites in connection with the construction of the authorised development, construction lay down areas and compounds and storage compounds;
- (l) works of restoration;
- (m) fencing or other means of enclosure; and
- (n) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development.

PART 2

Ancillary works

Works within the Order limits which fall within the scope of the work assessed by the environmental statement comprising—

- (a) intrusive ground investigations including the making of boreholes and trial pits;
- (b) temporary landing places, moorings or other means of accommodating vessels in the construction and/ or maintenance of the authorised development;
- (c) marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- (d) temporary works for the benefit or protection of land, watercourses or structures affected by the authorised development.

SCHEDULE 2

Article 3

REQUIREMENTS

Time limits

1. The authorised development must commence no later than the expiration of seven years beginning with the date this Order comes into force.

Offshore design parameters

2.—(1) The wind turbine generators to be constructed or operated as part of the authorised development must be located within the area delineated by the co-ordinates in Table 2 below and shown on sheet 2 of the works plans.

Table 2

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
IC	53° 25' 17.755" N	3° 44' 43.879" W	II	53° 28' 41.909" N	3° 38' 47.993" W
ID	53° 25' 57.179" N	3° 47' 53.309" W	IJ	53° 28' 31.364" N	3° 39' 17.852" W
IE	53° 26' 42.823" N	3° 51' 33.278" W	IK	53° 28' 5.013" N	3° 40' 32.272" W
IF	53° 29' 16.893" N	3° 51' 37.376" W	IL	53° 27' 1.865" N	3° 41' 31.636" W
IG	53° 29' 26.671" N	3° 36' 37.688" W	IM	53° 26' 45.454" N	3° 41' 14.509" W

IH 53° 29' 7.091" N 3° 37' 36.682" W

(2) The offshore works must not exceed the parameters set out in Table 3.

Table 3

<i>Parameter</i>	<i>Value</i>
Maximum number of wind turbine generators	50
Maximum total rotor swept area (km ²)	2,500,412
Maximum height of turbines when measured from MHWS to the tip of the vertical blade (m)	332
Maximum rotor diameter of each turbine (m)	306
Minimum distance from MHWS to the lowest point of the rotating blade for each turbine (m)	22
Minimum distance between wind turbines (in all directions) (m)	830
Maximum pile diameter of single pile structures (m)	15
Maximum pile diameter of two or more pile structures (m)	8
Maximum total seabed footprint for wind turbine generators (excluding scour protection) (m ²)	98,175
Maximum total seabed footprint for wind turbine generators (including scour protection) (m ²)	570,209
Maximum width of any supporting structure (m) at mean sea level	15
Maximum number of offshore substations	2
Dimensions of offshore substations:	
Height when measured from MHWS (m)	77.3
Length (m)	80
Topside area (m ²)	4,000
Maximum total seabed footprint area for offshore electrical installation foundations (excluding scour protection) (m ²)	14,000
Maximum total seabed footprint area for offshore electrical installation foundations (including scour protection) (m ²)	21,600
Maximum volume of natural material for disposal (m ³)	12,920,356
Maximum total volume of scour protection for wind turbine generators and offshore substations (m ³)	952,282
Maximum number of meteorological masts	1
Maximum total seabed footprint area for meteorological mast foundations (excluding scour protection) (m ²)	20
Maximum total seabed footprint area for meteorological mast foundations (including scour protection) (sq m)	855
Maximum width of any supporting structure for meteorological mast (m)	5
Maximum number of any LIDAR measurement buoys	3
Maximum number of any permanent vessel buoys	3
Maximum total length of cables (km)	203.4
Maximum volume of cable protection (m ³)	366,513
Maximum footprint of cable protection (m ²)	474,476
Maximum number of cable crossings	19

Aviation safety

3.—(1) The undertaker must exhibit such lights, with such shape, colour and character and at such times as are required by Air Navigation Order 2016 and/or determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority. Lighting installed specifically to meet Ministry of Defence aviation safety requirements must remain operational for the life of the authorised development unless otherwise agreed with the Ministry of Defence.

- (a) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the offshore works, of the following—
 - (b) the date of the commencement of construction of the offshore works;
 - (c) the date any wind turbine generators are brought into use;
 - (d) the maximum height of any construction equipment to be used;
 - (e) the maximum heights of any wind turbine generator, meteorological mast and offshore electrical platform to be constructed;
 - (f) the latitude and longitude of each wind turbine generator, meteorological mast and offshore electrical platform to be constructed,
- and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the offshore works.

Offshore Noise

4. Except in an emergency or with the prior written approval of the Secretary of State in consultation with the relevant planning authority, the noise generated during the construction of the offshore works when measured at OS Grid Reference 279980; 381977 must not, in onshore wind weather conditions, exceed 50 dB(A) Leq,T between the hours of 2300-0700 when measured in accordance with British Standard BS5228:2009+A1:2014, Code of practice for noise and vibration control on construction and open sites.

Stages of authorised development

5.—(1) The onshore works may not be commenced until notification has been submitted to the relevant planning authority detailing whether the onshore works will be constructed:

- (a) in a single stage; or
- (b) in two or more stages.

(2) The onshore works may not be commenced until details of the stages of the onshore works have been submitted to the relevant planning authority.

(3) The construction of the onshore works must follow the details provided under sub-paragraph (2) of this requirement.

Substation works

6.—(1) Construction of Work No. 31A must not commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) the dimensions, colour and materials used for the buildings;
- (f) security fencing;
- (g) vehicular and pedestrian access, parking and circulation areas; and
- (h) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;

have been submitted to and approved by the relevant planning authority.

(2) The details submitted under sub-paragraph (1) of this requirement must be in accordance with requirement 7 (detailed design parameters onshore) and substantially in accordance with the outline design principles document.

(3) Work No. 31A must be carried out in accordance with the approved details.

Detailed design parameters onshore

7.—(1) The onshore works must not exceed the parameters set out in Table 4.

Table 4

<i>Parameter</i>	<i>Value</i>
Maximum number of landfall transition joint bays	2
Maximum height of any building within Work No. 31A above AOD (m)	49.975
Maximum height of any external electrical equipment (excluding lightning rods) within Work No. 31A above AOD (m)	47.475
Maximum number of lightning rods within Work No.31A	12
Maximum height of any lightning rod above AOD (m)	53
Maximum area of the fenced compound within Work No. 31A (m ²)	50,000
Maximum number of connection bays within Work No. 39	2

(2) Trenchless installation techniques must be used to install the cable ducts and electrical circuits where identified in the crossings schedule for the purpose of passing under a relevant obstruction unless otherwise agreed by the relevant planning authority, following consultation with the relevant drainage boards, Natural Resources Wales and the highways authority,.

Provision of landscaping

8.—(1) Work No. 31A must not be commenced until a written landscaping scheme and associated work programme in accordance with the outline landscape and ecological management plan for the relevant work has been submitted to and approved by the relevant planning authority.

(2) The written landscaping scheme must include details of all proposed hard and soft landscaping works including—

- (a) location, number, species, size and planting density of any proposed planting including any trees; and
- (b) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

9.—(1) All landscaping works must be carried out in accordance with the landscaping schemes approved under requirement 8 (provision of landscaping).

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

Code of construction practice

10.—(1) No stage of the onshore works may commence until for that stage a code of construction practice has been submitted to and approved by the relevant planning authority.

(2) The code of construction practice must accord with the outline code of construction practice and include, as appropriate to the relevant stage —

- (a) Construction Method Statement;
- (b) Noise and Vibration Management Plan;
- (c) Air Quality Management Plan;
- (d) Soil Management Plan;
- (e) Site Waste Management Plan;
- (f) Pollution Prevention and Emergency Incident Response Plan;
- (g) Construction Traffic Management Plan;

- (h) Public Access Management Plan;
- (i) Travel Plan;
- (j) Artificial Light Emissions Plan;
- (k) Invasive Non-Native Species Management Plan; and
- (l) Construction Communications Plan

(3) The code of construction practice approved in relation to the relevant stage of the onshore works must be followed in relation to that stage of the onshore works.

(4) Pre-commencement screening, fencing and site security works must only take place in accordance with a specific plan for such pre-commencement works which must accord with the relevant details set out in the outline code of construction practice, and which has been submitted to and approved by the relevant local authority.

Highway accesses

11.—(1) No stage of the onshore works may commence until, for that stage, written details of the design, layout and siting of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic has been submitted to and approved by the relevant planning authority in consultation with the highway authority.

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

Onshore archaeology

12.—(1) No stage of the onshore works may commence until for that stage an archaeological written scheme of investigation in accordance with the outline written scheme of investigation (onshore) as appropriate for the relevant stage has been submitted to and approved by the relevant planning authority.

(2) Pre-commencement surveys, site preparation works and archaeological investigations must only take place in accordance the details set out in the outline written scheme of investigation (onshore).

Landscape and Ecological management plan

13.—(1) No stage of the onshore works may commence until for that stage a written landscape and ecological management plan in accordance with the outline landscape and ecological management plan as appropriate for the relevant stage, has, following consultation with Natural Resources Wales, been submitted to and approved by the relevant planning authority.

(2) The landscape and ecological management plan must include an implementation timetable and must be implemented as approved.

European protected species onshore

14.—(1) No stage of the onshore works may commence until, for that stage, final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by any part of that stage of the onshore works.

(2) Where a European protected species is shown to be present, the stage of the onshore works likely to affect the species must not commence until, after consultation with Natural Resources Wales, a scheme of protection and mitigation measures for that stage has been submitted to and approved by the relevant planning authority.

(3) Each stage of the onshore works which requires a scheme of protection and mitigation measures in accordance with sub-paragraph (2) of this requirement must be carried out in accordance with the approved scheme.

(4) In this paragraph, “European protected species” has the same meaning as in regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017.

Construction hours

15.—(1) Except as otherwise agreed in the code of construction practice and subject to sub-paragraphs (2) to (4), construction of the onshore works and construction-related traffic movements to or from the site of the relevant Work may take place only between 7 a.m. and 7 p.m. from Monday to Saturday, with no activity on Sundays or bank holidays.

(2) If agreed in advance with the relevant planning authority, construction of the onshore works and construction-related traffic movements to or from the site of the relevant Work may take place outside the hours specified in sub-paragraph (1) for certain identified works including—

- (a) where continuous periods of construction are required, for works such as concrete pouring and finishing, electrical circuit pulling and jointing and testing;
- (b) for the delivery and unloading of abnormal loads;
- (c) for the landfall works; and
- (d) for any other time-critical element of the onshore works.

(3) Except as provided in sub-paragraph (4), all construction works which are to be undertaken outside the hours specified in sub-paragraph (1) must be agreed in advance with the relevant planning authority.

(4) In respect of trenchless installation techniques where continuous 24-hour working is required, the undertaker must notify the relevant planning authority in advance of such works.

Surface and foul water drainage

16.—(1) Work No. 31A must not commence until, for that numbered work, a written surface and foul water drainage plan (including details of any watercourse crossings and proposals for management and maintenance) has following consultation with Natural Resources Wales been submitted to and approved by the relevant planning authority. The surface and foul water drainage plan must be substantially in accordance with the principles set out in the outline drainage strategy.

(2) The surface and foul water drainage plan must be implemented in accordance with the approved details, prior to final commissioning of Work No.31A.

Restoration of land used temporarily for construction

17. Any land landward of MHWS which is used temporarily for construction of the onshore works and not ultimately incorporated in permanent works or approved landscaping must be reinstated within six months of completion of the relevant stage of the onshore works in accordance with details approved by the relevant planning authority.

Control of noise during operational stage

18.—(1) The noise rating level for the operation of Work No. 31A must not exceed the following levels at a position representative of the façade, in free-field conditions, of, any building lawfully occupied for residential or accommodation purposes at the date of the granting of this Order, at each of the locations set out in (a) to (d) below:

- (a) 36 dB LAr,Tr at Gwelfryn (OS: 300654, 373889),
- (b) 36 dB LAr,Tr at Caer Delyn (OS 301339, 373960),
- (c) 39 dB LAr,Tr at Bodelwyddan Castle Hotel (OS 299967, 374819)
- (d) 41 dB LAr,Tr at Faenol Bropor (OS 301298, 374784)

(2) The noise levels set out in sub-paragraph (1) are to be measured:

- (a) in accordance with British Standard BS4142:2014+A1:2019, Methods for rating and assessing industrial and commercial sound;; and

- (b) with the a microphone placed 1.5m above the ground in free-field conditions (being at least 3.5m from the nearest vertical reflecting surface).

Control of operational artificial light emissions

19.—(1) Work No. 31A must not be brought into operation until a written scheme for the management and mitigation of artificial light emissions has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented and maintained during the lifetime of Work No. 31A.

Offshore decommissioning

20. No offshore works may commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) (requirement to prepare decommissioning programmes) of the 2004 Act has been submitted to the Secretary of State for approval.

Onshore decommissioning

21.—(1) A written scheme of decommissioning for the onshore works must be submitted to and approved by the relevant planning authority at least six months prior to any decommissioning works commencing.

(2) The written scheme of decommissioning for the onshore works must include a code of construction practice and the approved scheme must be implemented as approved in the carrying out of any decommissioning works or relevant part of it.

Requirement for written approval

22. Where under any of the above requirements the approval or agreement of the Secretary of State, the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

23. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed by the Secretary of State, the relevant planning authority or another person.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

In the County of Denbighshire:

<i>(1)</i> <i>Street</i>	<i>(2)</i> <i>Extent as shown on the street works and access plan</i>
Ferguson Avenue, Rhyl	Between the points labelled AA and AB on sheet 3
Garford Road, Rhyl	Between the points labelled AC and AD on sheet 2
Rhyl Golf Club Access	Between the points labelled AE and AF on sheet 2
Robin Hood Holiday Camp accesses	Between the points labelled AG and AH on sheet 2
B5119, Dyserth Road	Between the points labelled AI and AJ on sheet 4
B5119, Dyserth Road	Between the points labelled AK and AL on sheet 4
A525	Between the points labelled AM and AN on sheet 6

A547, eastern Rhuddlan bypass	Between the points labelled AO and AP on sheet 6
A547, Abergele Road	Between the points labelled AQ and AR on sheet 7
Bodelwyddan Road	Between the points labelled AS and AT on sheet 8
Nant-Y-Faenol Road	Between the points labelled AU and AV on sheet 8
Junction 26 of the A55	Between the points labelled AW and AX on sheet 10
Junction 26 of the A55	Between the points labelled AY and AZ on sheet 10
Minor road to the north of St. Asaph Business Park	Between the points labelled BA and BB on sheet 10
B5381 Glascoed Road	Between the points labelled BC and BD on sheet 11
Minor road to the south of the B5381 Glascoed Road	Between the points labelled BE and BF on sheet 11
B5381 Glascoed Road	Between the points labelled BG and BH on sheet 11

SCHEDULE 4

Articles 11 and 12

STREETS AND RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP OR RESTRICTED

In the County of Denbighshire:

<i>(1)</i> <i>Street or right of way to be temporarily stopped up or restricted</i>	<i>(2)</i> <i>Extent of temporary stopping up or restriction</i>
Footpath DE/206/5	Between points Ax and Ay as shown on sheet 5 of the temporary stopping of rights of way plan
Footpath DE/206/3	Between points Bx and By as shown on sheet 5 of the temporary stopping of rights of way plan
Footpath DE/206/17	Between points Cx and Cy as shown on sheet 6 of the temporary stopping of rights of way plan
Footpath DE/206/46	Between points Da and Db and Dx and Dy as shown on sheet 6 of the temporary stopping of rights of way plan
Footpath DE/206/23	Between points Ba and Bb as shown on sheet 6 of the temporary stopping of rights of way plan
Footpath DE/206/46	Between points Ex and Ey as shown on sheet 8 of the temporary stopping of rights of way plan
Footpath DE/206/4	Between points Fx and Fy as shown on sheet 8 of the temporary stopping of rights of way plan
Footpath DE/201/7	Between points Gx and Gy as shown on sheet 9 of the temporary stopping of rights of way plan
Footpath DE/201/7	Between points Hx and Hy as shown on sheets 9 and 10 of the temporary stopping of rights of way plan
Bridleway DE/2019/9	Between points Ix and Iy as shown on sheet 10 of the temporary stopping of rights of way plan
Footpath DE/105/7	Between points Jx and Jy as shown on sheet 11 of the temporary stopping of rights of way plan

SCHEDULE 5

Article 13

ACCESS TO WORKS

In the county of Denbighshire

<i>(1)</i>	<i>(2)</i> <i>Description of new access</i>

<i>Reference as shown on the street works and access plan</i>	
AC-A	From the public highway Ferguson Avenue for access to temporary works during construction, and operational access
AC-B1	Over and from the Rhyl Golf Club access to temporary works area during construction; no heavy goods vehicle access is to be taken over this access
AC-B2	From the public highway Garford Road for access to temporary works during construction and operational access
AC-C1	Over and from the existing Robin Hood Holiday Camp access to temporary works area during construction; no heavy goods vehicle access is to be taken over this access
AC-C2	Over and from the existing Robin Hood Holiday Camp access to temporary works area during construction; no heavy goods vehicle access is to be taken over this access
AC-C3	Over and from the existing Robin Hood Holiday Camp access to temporary works area during construction; no heavy goods vehicle access is to be taken over this access
AC-D	From the public highway B5119 Dyserth Road and the existing access track for access to temporary works during construction, and operational access
AC-E	From the public highway B5119 Dyserth Road to temporary works area to the north of that highway during construction
AC-F	From the public highway B5119 Dyserth Road to temporary works area to the south of that highway during construction
AC-G	From the public highway A547, eastern Rhuddlan bypass, for access to temporary works during construction and operational access
AC-H	From the public highway A525 to temporary works area during construction
AC-I	Over and from the existing access to the sewage treatment works at Tan-Yr-Eglwys Road for access to temporary works during construction and operational access
AC-J	From the public highway A547 Abergele Road to temporary works area during construction
AC-K	From the public highway A547 Abergele Road to temporary works area during construction
AC-L	From the public highway Bodelwyddan Road to temporary works area during construction
AC-M	From the public highway Bodelwyddan Road to temporary works area during construction
AC-N1	From the public highway Nant-Y-Faenol Road to temporary works area during construction
AC-N2	From the public highway Nant-Y-Faenol Road to temporary works area during construction
AC-01	Over and from the existing farm access from Junction 26 of the A55 public highway for access to temporary works during construction, and operational access
AC-02	Over and from the existing farm access from Junction 26 of the A55 public highway to temporary works area during construction
AC-P	Over and from the minor road to the north of St. Asaph Business Park
AC-Q	From the public highway B5381 Glascoed Road to temporary works area during construction
AC-Q	From the public highway B5381 Glascoed Road to temporary works area during construction

AC-R1	From the minor road to the south of B5381 Glascoed Road to temporary works area during construction
AC-R2	From the minor road to the south of B5381 Glascoed Road to temporary works area during construction
AC-S	From the public highway B5381 Glascoed Road, over and from the existing National Grid access, for access to temporary works during construction, and operational access

SCHEDULE 6

Article 27

LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

In the County of Denbighshire:

<i>(1) Number of plot shown on land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of authorised development</i>
2	Temporary use as a construction working area, use for cable installation vessel anchoring and for access to facilitate construction of Work Nos 2A, 3 and 4	Work No.3A
3, 4, 5, 24, 27	Temporary use as a construction working area, use for cable installation vessel anchoring and for access to facilitate construction of Work Nos. 2A, 3 and 4	Work Nos.3A and 6
37, 38, 39, 40, 43, 44, 45, 46	Temporary use as a construction working area, use for cable installation vessel anchoring and for access to facilitate construction of Work Nos.2A, 3, 4, 5 and 41	Work Nos.3A and 7
7, 9, 10, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 88	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 2A, 3, 4, 5, 7 and 41	Work No.6
92, 93, 94, 95, 96, 98	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 5 and 7	Work No.6
15	Temporary use as a construction working area, use as a temporary construction compound and for access to facilitate construction of Work Nos. 2A, 3, 4, 5, 7 and 41	Work Nos. 6 and 6A
47, 49, 50, 52, 54, 57, 59, 60, 62, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 79, 80, 81, 84, 85, 86	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 2A, 3, 4, 5, 7 and 41	Work No. 7 and temporary mitigation area
75	Temporary use as a construction working area, use as a temporary construction compound and for access to facilitate construction of Work Nos. 2A, 3, 4, 5, 7 and 41	Work Nos. 7 and 7A

104, 107, 108, 109, 110, 111, 112, 113, 117, 121, 122, 123, 124,	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 5, 8, 8A, 9 and 41	Work No.8
119, 127, 130, 132, 133, 137, 138	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 9, 11 and 41	Work No.10
120, 128	Temporary use as a construction working area, use as a temporary construction compound and for access to facilitate construction of Work Nos. 9, 11 and 41	Work No.10A
159, 161	Temporary use as a construction working area and for access to facilitate construction of Work No. 11	Work No.12
170, 171, 172, 173, 176, 181, 182	Temporary use as a construction working area and for access to facilitate construction of Work No. 11 and temporary mitigation area	Work No.13 and temporary mitigation area
195, 197, 205	Temporary use as a construction working area, use as a temporary construction compound and for access to facilitate construction of Work Nos. 11, 15 and 41 and temporary mitigation area	Work Nos.14,14A and temporary mitigation area
210, 211, 212, 215, 218, 219	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 11, 15 and 41 and temporary mitigation area	Work No. 14 and temporary mitigation area
221, 237	Temporary use as a construction working area, use as a temporary construction compound and for access to facilitate construction of Work Nos. 11, 15 and 41	Work Nos.16 and 16A
222, 223, 224, 227, 228, 229, 230, 231, 232, 234	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 11, 15 and 41	Work No. 16
248, 249, 251,	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 15, 18 and 41	Work No. 17
270, 271, 273, 274	Temporary use as a construction working area for drainage during construction of Work No. 19	Work No. 19
276, 277, 279, 282	Temporary use as a construction working area, use as a temporary construction compound and for access to facilitate construction of Work Nos. 19, 21 and 41	Work Nos. 20 and 20A
283, 284, 289, 290	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 19, 21 and 41	Work No. 20
303	Temporary use as a construction working area for drainage during construction of Work No. 21	Work No. 21
307, 308, 313	Temporary use as a construction working area, use as a temporary construction compound and for access to facilitate construction of Work Nos. 21, 23 and 41	Work Nos. 22 and 22A

310, 311, 312, 314, 315, 323, 324, 325, 326, 327, 328, 329	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 21, 23 and 41	Work No. 22
357	Temporary use as a construction working area for drainage during construction of Work No. 23	Work No. 23
330, 331, 332, 333, 334, 338, 339, 340, 341, 343, 345	Temporary use to improve visibility splays and for access to facilitate construction of Work Nos. 23 and 41	Work No. 24
348, 350, 351, 352	Temporary use a construction working area and for access to facilitate construction of Work No. 23	Work No. 25
369, 370, 375	Temporary use as a construction working area, use as a temporary construction compound and for access to facilitate construction of Work Nos. 23 and 41, and temporary mitigation area	Work Nos.26, 26A and temporary mitigation area
404, 405, 406, 411, 414	Temporary use as a construction working area and for access to facilitate construction of Work Nos. 23 and 41, and temporary mitigation area	Work No. 27 and temporary mitigation area
424, 433, 434	Temporary use as a construction working area, use as a temporary construction compound and for access to facilitate construction of Work Nos. 33, 34, 36 and 41, and temporary mitigation area	Work Nos.37, 37A and temporary mitigation area
441, 442, 443, 449, 450, 451, 452, 454, 455	Temporary use to improve visibility splays and for access to facilitate construction of Work Nos. 36 and 41, and temporary mitigation area	Work No. 38 and temporary mitigation area
463, 464	Temporary use as a construction working area, use as a temporary construction compound, improvement of existing accesses and for access to facilitate construction of Work Nos. 36, 40 and 41, and temporary mitigation area	Work Nos.39, 39A and temporary mitigation area
474, 475, 476, 477, 493, 494, 495, 498, 499	Temporary use as a construction working area, improvement of existing accesses and for access to facilitate construction of Work Nos. 36, 40 and 41, and temporary mitigation area	Work No. 39 and temporary mitigation area

SCHEDULE 7

Article 27

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

In the County of Denbighshire:

(1) <i>Number of plot shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
1, 28, 29, 30, 31,	Cable rights and restrictive covenants

32, 33, 34, 35,
 87, 97, 101, 103,
 105, 118, 139,
 140, 157, 162,
 184, 187, 190,
 194, 242, 247,
 250, 257, 258,
 259, 261, 269,
 272, 275, 285,
 293, 294, 297,
 309, 316, 317,
 318, 319, 335,
 347, 349, 353,
 359, 365, 374,
 401, 403, 413,
 435, 437, 438,
 453, 462, 465,
 466, 471

1. Cable rights

Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—

- (a) lay down, install, retain, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the Land, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (all collectively referred to as the “cables”), and in doing so, to use or resort to trenchless installation techniques including (but not limited to) directional drilling beneath sea defences, watercourses, roads and railways;
- (b) enter, be on, and break open and break up the surface of the Land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;
- (c) to benefit from continuous vertical and lateral support for the authorised development;
- (d) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;
- (e) construct and install and thereafter use the Land for all necessary purposes for the commissioning, construction, repair, testing and maintenance of the cables in, on or under the Land;
- (f) place and use plant, machinery, structures and temporary structures within the Land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and to erect temporary signage and provide measures for the benefit of public and personnel safety;
- (g) erect fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds including trenchless installation technique compounds and working areas;
- (h) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal is being carried out;
- (i) effect access to the highway;
- (j) make such investigations in or on the Land as required;
- (k) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the Land or other land which would if not felled, lopped, cut or removed would obstruct or interfere with the operation of the cables;
- (l) remove and discharge water from the Land, and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to

	<p>drain into and manage waterflows in any drains, watercourses and culverts, install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse drainage schemes on the Land or reinstate the any existing drainage scheme on the Land;</p> <p>(m) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(n) remove fences and structures within the Land during any period during which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instatement or suitable replacement of the fences or structures following the exercise of the rights);</p> <p>(o) store and stockpile materials (including excavated material);</p> <p>(p) create boreholes and trial excavation pits for the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same through construction, maintenance repair, replacement or decommissioning and to reinstate the Land;</p> <p>(q) to excavate materials below ground level, including soils, and to store and re-use or dispose of the same, and in so excavating to undertake any works, including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order;</p> <p>(r) lay out temporary paths and bridleways for public use;</p> <p>(s) to install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna;</p> <p>(t) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land and/or in accordance with any necessary licences relating to protected species and/or wildlife; and</p> <p>(u) (in an emergency only when the cables are temporarily unusable) to lay down, install, use, maintain and inspect underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the Land.</p> <p>2. Restrictive covenants</p> <p>A restrictive covenant over the Land for the benefit of the remainder of the Order land to:</p> <p>(a) prevent anything to be done in or upon the Land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);</p> <p>(b) prevent anything to be done by way of hard surfacing of the Land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not</p>
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	<p>cause damage to relevant part of the authorised development nor make it materially more difficult or expensive to maintain the authorised development);</p> <p>(c) to prevent anything to be done by way of excavation of any kind in the Land nor any activities which would alter, increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker save as are reasonably required for agricultural activities (being ploughing to no deeper than 0.6m for the purposes of arable farming) or are required to be carried out by National Grid in order to exercise their statutory functions or rights in relation to their apparatus (if any) within the Land;</p> <p>(d) to prevent the planting or growing within the Land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised development nor make it materially more difficult or expensive to access the relevant part of the authorised development);</p> <p>(e) to prevent anything being done which may interfere with free flow and passage of electricity or telecommunications through the cables or support for the authorised development;</p> <p>(f) to prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development; and</p> <p>(g) to prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation including any ploughing or grazing without the prior written consent of the undertaker.</p>
100	<p>Cable rights, transition joint bay rights and restrictive covenants</p> <p>1. Cable rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <p>(a) lay down, install, retain, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the Land, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (all collectively referred to as the “cables”), and in doing so, to use or resort to trenchless installation techniques including (but not limited to) directional drilling beneath sea defences, watercourses, roads and railways;</p> <p>(b) enter, be on, and break open and break up the surface of the Land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;</p> <p>(c) to benefit from continuous vertical and lateral support for the authorised development;</p> <p>(d) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing,</p>

	<p>adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(e) construct and install and thereafter use the Land for all necessary purposes for the commissioning, construction, repair, testing and maintenance of the cables in, on or under the Land;</p> <p>(f) place and use plant, machinery, structures and temporary structures within the Land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and to erect temporary signage and provide measures for the benefit of public and personnel safety;</p> <p>(g) erect fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds including trenchless installation technique compounds and working areas;</p> <p>(h) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal is being carried out;</p> <p>(i) effect access to the highway;</p> <p>(j) make such investigations in or on the Land as required;</p> <p>(k) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the Land or other land which would if not felled, lopped, cut or removed would obstruct or interfere with the operation of the cables;</p> <p>(l) remove and discharge water from the Land, and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse drainage schemes on the Land or reinstate the any existing drainage scheme on the Land;</p> <p>(m) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(n) remove fences and structures within the Land during any period during which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instatement or suitable replacement of the fences or structures following the exercise of the rights);</p> <p>(o) store and stockpile materials (including excavated material);</p> <p>(p) create boreholes and trial excavation pits for the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same through construction, maintenance repair, replacement or decommissioning and to reinstate the Land;</p> <p>(q) to excavate materials below ground level, including soils, and to store and re-use or dispose of the same, and in so excavating to undertake any works, including works of protection or removal of archaeological</p>
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	<p>remains as may be required by any written scheme of investigation approved under this Order;</p> <ul style="list-style-type: none"> (r) lay out temporary paths and bridleways for public use; (s) to install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna; (t) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land and/or in accordance with any necessary licences relating to protected species and/or wildlife; and (u) (in an emergency only when the cables are temporarily unusable) to lay down, install, use, maintain and inspect underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the Land. <p>2. Transition joint bay rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <ul style="list-style-type: none"> (a) lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace transition joint bays; and (b) to adjust, alter, remove, replace, and create tunnels under sea defences including walls and groynes. <p>3. Restrictive covenants</p> <p>A restrictive covenant over the Land for the benefit of the remainder of the Order land to:</p> <ul style="list-style-type: none"> (a) prevent anything to be done in or upon the Land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto); (b) prevent anything to be done by way of hard surfacing of the Land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised development nor make it materially more difficult or expensive to maintain the authorised development); (c) to prevent anything to be done by way of excavation of any kind in the Land nor any activities which would alter, increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker save as are reasonably required for agricultural activities (being ploughing to no deeper than 0.6m for the purposes of arable farming) or are required to be carried out by National Grid in order to exercise their statutory functions or rights in relation to their apparatus (if any) within the Land; (d) to prevent the planting or growing within the Land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised development nor make it materially
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	<p>more difficult or expensive to access the relevant part of the authorised development);</p> <ul style="list-style-type: none"> (e) to prevent anything being done which may interfere with free flow and passage of electricity or telecommunications through the cables or support for the authorised development; (f) to prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development; and (g) to prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation including any ploughing or grazing without the prior written consent of the undertaker.
<p>89, 90, 91, 99, 131, 147, 216, 217, 260, 291, 320, 321, 322, 342, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 425, 444</p>	<p>Cable rights and restrictive covenants under existing infrastructure</p> <p>1. Cable rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <ul style="list-style-type: none"> (a) lay down, install, retain, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the Land, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (all collectively referred to as the “cables”), and in doing so, to use or resort to trenchless installation techniques including (but not limited to) directional drilling beneath sea defences, watercourses, roads and railways; (b) enter, be on, and break open and break up the surface of the Land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables; (c) to benefit from continuous vertical and lateral support for the authorised development; (d) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables; (e) construct and install and thereafter use the Land for all necessary purposes for the commissioning, construction, repair, testing and maintenance of the cables in, on or under the Land; (f) place and use plant, machinery, structures and temporary structures within the Land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and to erect temporary signage and provide measures for the benefit of public and personnel safety; (g) erect fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds including trenchless installation technique compounds and working areas; (h) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but

	<p>not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal is being carried out;</p> <ul style="list-style-type: none"> (i) effect access to the highway; (j) make such investigations in or on the Land as required; (k) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the Land or other land which would if not felled, lopped, cut or removed would obstruct or interfere with the operation of the cables; (l) remove and discharge water from the Land, and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse drainage schemes on the Land or reinstate the any existing drainage scheme on the Land; (m) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers); (n) remove fences and structures within the Land during any period during which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instatement or suitable replacement of the fences or structures following the exercise of the rights); (o) store and stockpile materials (including excavated material); (p) create boreholes and trial excavation pits for the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same through construction, maintenance repair, replacement or decommissioning and to reinstate the Land; (q) to excavate materials below ground level, including soils, and to store and re-use or dispose of the same, and in so excavating to undertake any works, including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order; (r) lay out temporary paths and bridleways for public use; (s) to install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna; (t) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land and/or in accordance with any necessary licences relating to protected species and/or wildlife; and (u) (in an emergency only when the cables are temporarily unusable) to lay down, install, use, maintain and inspect underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated
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	<p>works and other conducting media together with conduits or pipes for containing the same in and under the Land.</p> <p>2. Restrictive covenants</p> <p>A restrictive covenant over the Land for the benefit of the remainder of the Order land to:</p> <ul style="list-style-type: none"> (a) prevent anything to be done in or upon the Land or any part thereof for the purpose of the erection of any buildings or construction, erection or works of any kind (including the foundations or footings thereto) other than those related to works for the benefit of existing highway or railway infrastructure; (b) to prevent anything to be done by way of excavation of any kind in the Land nor any activities which would alter, increase or decrease ground cover or soil levels by greater than 1 metre whatsoever without the consent in writing of the undertaker, save where such works are reasonably required for the exercise of statutory functions or rights in relation any public highway or railway on the Land and will not damage, undermine or interfere with the cables; (c) to prevent the planting or growing within the Land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised development nor make it materially more difficult or expensive to access the relevant part of the authorised development); (d) to prevent anything being done which may interfere with free flow and passage of electricity or telecommunications through the cables or support for the authorised development; and (e) to prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development.
<p>6, 8, 11, 12, 14, 36, 41, 42, 48, 51, 53, 55, 56, 58, 61, 63, 66, 76, 77, 78, 82, 83, 102, 106, 114, 115, 116, 125, 126, 129, 134, 135, 136, 142, 152, 153, 154, 155, 169, 174, 175, 178, 179, 180, 183, 196, 213, 214, 220, 222, 225, 226, 233, 235, 236, 238, 239, 240, 241, 243, 244, 245, 246, 252, 253, 254, 255, 256, 262, 263, 264, 265,</p>	<p>Access rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <ul style="list-style-type: none"> (a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the Works, the inspection, testing, maintenance, renewal, upgrading, replacement and removal of the cables and connection into any adjacent cables and associated works, to take plant and equipment on to adjoining land and make such investigations in or on the Land which is ancillary for the purposes of exercise of the rights; (b) to construct, use, maintain and improve a permanent means of access including visibility splays, and retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the Land, adjoining land and highway; (c) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair, renewal or decommissioning is being carried out;

<p>266, 267, 268, 278, 280, 281, 286, 287, 288, 292, 295, 296, 298, 299, 300, 301, 302, 304, 305, 306, 336, 337, 344, 346, 354, 355, 356, 358, 366, 367, 368, 371, 372, 373, 377, 379, 380, 407, 412, 429, 436, 439, 440, 461, 467, 468, 469, 470,</p>	<ul style="list-style-type: none"> (d) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land; (e) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety; (f) fell, lop, cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be present on the Land for the purpose of enabling the right to pass and re-pass to adjoining land; (g) repair, improve, renew, remove, relocate and plant trees, woodland, shrubs, hedgerows, seeding and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping; (h) erect and remove temporary fencing, gates, walls, barriers or other means of enclosure; and (i) lay out temporary paths and bridleways for public use as temporary diversions for public rights of way which are interfered with during any period in which construction, maintenance, repair or renewal decommissioning is being carried out.
<p>418, 419, 420, 421, 422, 423, 426, 427, 428, 430, 431, 432</p>	<p>Visibility splay and highway verge rights and restrictive covenants</p> <p>1. Visibility splay and highway verge rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <ul style="list-style-type: none"> (a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the Works, and make such investigations in or on the Land which is ancillary for the purposes of exercise of the rights; (b) to construct, use, maintain and improve visibility splays, and retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes and visibility splays for the purposes of accessing the Land, adjoining land and highway; and (c) fell, lop, cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be present on the Land for the purpose of maintaining visibility required for accesses. <p>2. Restrictive covenants</p> <p>A restrictive covenant over the Land for the benefit of the remainder of the Order land to prevent anything to be done in or upon the Land or any part thereof for the purpose of the erection of any buildings or construction, erection or works of any kind (including the foundations or footings thereto) which would interfere with use as a visibility splay, other than works undertaken by the highway authority.</p>
<p>145, 150, 160, 164, 168, 192, 409, 459</p>	<p>Mitigation work areas access rights, mitigation rights and restrictive covenants</p> <p>1. Permanent access rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <ul style="list-style-type: none"> (a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the Works, the inspection, testing, maintenance, renewal, upgrading, replacement and removal of

	<p>the cables and connection into any adjacent cables and associated works, to take plant and equipment on to adjoining land and make such investigations in or on the Land which is ancillary for the purposes of exercise of the rights;</p> <ul style="list-style-type: none"> (b) to construct, use, maintain and improve a permanent means of access including visibility splays, and retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the Land, adjoining land and highway; (c) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair, renewal or decommissioning is being carried out; (d) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land; (e) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety; (f) fell, lop, cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be present on the Land for the purpose of enabling the right to pass and re-pass to adjoining land; (g) repair, improve, renew, remove, relocate and plant trees, woodland, shrubs, hedgerows, seeding and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping; (h) erect and remove temporary fencing, gates, walls, barriers or other means of enclosure; and (i) lay out temporary paths and bridleways for public use as temporary diversions for public rights of way which are interfered with during any period in which construction, maintenance, repair or renewal decommissioning is being carried out. <p>2. Mitigation works rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <ul style="list-style-type: none"> (a) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodland, shrubs, hedgerows, seeding and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping; (b) install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works and the installation of temporary barriers for the protection of fauna; and (c) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land in accordance with any necessary licences relating to protected species and/or wildlife. <p>3. Restrictive covenants</p>
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	<p>A restrictive covenant over the Land for the benefit of the remainder of the Order land to prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation including any ploughing or grazing, during the period within which the undertaker is bound by any consent to maintain that ecological mitigation areas or areas of habitat creation, without the prior written consent of the undertaker.</p>
415	<p>Drainage rights and restrictive covenants</p> <p>1. Drainage rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <ul style="list-style-type: none"> (a) remove and discharge water from the Land and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, to lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace a drainage scheme on the Land (the “drainage works”); (b) inspect, use mechanical excavation (including directional drilling and/or digging), reinstate, remove, move or alter such part or parts of any drainage system on the Land for the purposes of the drainage works (including connecting the drainage works to any land drain as at the date of the drainage works); (c) enter, be on, and break up the surface of the Land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of the drainage works; (d) store and stockpile materials (including excavated material); (e) create boreholes and trail excavation pits for the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same through construction, maintenance repair, replacement or decommissioning and to reinstate the Land; (f) to excavate materials below ground level, including soils, and to store and re-use or dispose of the same, and in so excavating, to undertake any works, including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order; (g) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the drainage works; (h) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety for the purposes of the drainage works; (i) erect fencing, gates, walls, barriers or other means of enclosure, and create secure works areas or compounds including temporary trenchless installation technique compounds and working areas for the purposes of the drainage works; (j) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses

	<p>and drains during any period during which construction, maintenance, repair or renewal of any drainage work is being carried out;</p> <ul style="list-style-type: none"> (k) effect access to the highway; (l) make such investigations in or on the Land as required for the purposes of the drainage works; (m) use or resort to trenchless installation techniques including (but not limited to) directional drilling in connection with the drainage works; (n) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the Land or other land which would if not felled, lopped, cut or removed obstruct or interfere with the drainage works; (o) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers); (p) to install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna; and (q) to carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land in accordance with any necessary licences relating to protected species and/or wildlife. <p>2. Restrictive covenants</p> <p>A restrictive covenant over the Land for the benefit of the remainder of the Order land to:</p> <ul style="list-style-type: none"> (a) prevent anything to be done in or upon the Land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto); and (b) prevent anything to be done by way of hard surfacing of the Land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised development nor make it materially more difficult or expensive to maintain the authorised development).
<p>141, 143, 144, 146, 148, 149, 151, 156, 158, 163, 165, 166, 167, 177, 185, 186, 188, 189, 191, 193 198, 199, 200, 201, 202, 203, 204, 206, 207, 208, 209, 360, 361,</p>	<p>Mitigation work rights and restrictive covenants</p> <p>1. Mitigation works rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <ul style="list-style-type: none"> (a) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodland, shrubs, hedgerows, seeding and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping;

<p>362, 363, 364, 376, 378, 408, 410, 445, 446, 447, 448, 456, 457, 458, 460</p>	<p>(b) install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works and the installation of temporary barriers for the protection of fauna; and</p> <p>(c) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land in accordance with any necessary licences relating to protected species and/or wildlife.</p> <p>2. Restrictive covenants</p> <p>A restrictive covenant over the Land for the benefit of the remainder of the Order land to prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation including any ploughing or grazing, during the period within which the undertaker is bound by any consent to maintain that ecological mitigation areas or areas of habitat creation, without the prior written consent of the undertaker.</p>
<p>472, 473, 478, 479, 480, 481, 482, 483, 484, 485, 486</p>	<p>National Grid substation works area rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <p>(a) lay down, install, retain, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the Land, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (all collectively referred to as the “cables”);</p> <p>(b) enter, be on, and break open and break up the surface of the Land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;</p> <p>(c) to benefit from continuous vertical and lateral support for the authorised development;</p> <p>(d) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting the authorised development and for removing and replacing the cables;</p> <p>(e) to use, maintain, renew improve and alter existing accesses, roads, streets, tracks or ways over the Land, providing that such use is not exclusive and exercise of this right must not prevent or unreasonably inhibit use by other parties;</p> <p>(f) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair, renewal or decommissioning is being carried out;</p>

	<ul style="list-style-type: none"> (g) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety; (h) fell, lop, cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be present on the Land for the purpose of enabling the right to pass and re-pass to adjoining land; and (i) remove and discharge water from the Land and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, to lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace a drainage scheme on the Land; and (j) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers).
<p>487, 488, 489, 490, 491, 492, 496, 497</p>	<p>National Grid substation access area rights</p> <p>Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—</p> <ul style="list-style-type: none"> (a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting the authorised development and for removing and replacing the cables; (b) to use, maintain, renew improve and alter existing accesses, roads, streets, tracks or ways over the Land, providing that such use is not exclusive and exercise of this right must not prevent or unreasonably inhibit use by other parties; (c) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair, renewal or decommissioning is being carried out; (d) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety; (e) fell, lop, cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be present on the Land for the purpose of enabling the right to pass and re-pass to adjoining land; and (f) remove and discharge water from the Land and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, to lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace a drainage scheme on the Land; and

	(g) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers).
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SCHEDULE 8

Article 25

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

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

2. Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification-

For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5) (a) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 4(5) of Schedule 8 to the Awel y Môr Offshore Wind Farm Order 202[•]).
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 4(8) of Schedule 8 to the Awel y Môr Offshore Wind Farm Order 202[•]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.

(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 4(3) of this Schedule—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable.”

(a) 1973 c.26.

Application of Part 1 of the 1965 Act

3.—(1) Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 26 (application of Part 1 of the Compulsory Purchase Act 1965) to the acquisition of land under article 19 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 22 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 4(2); and
- (b) with such other modifications as may be necessary.

(2) The modifications referred to in sub-paragraph (1) are as follows.

References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

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

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

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 24(3) is also modified so as to enable the acquiring authority in circumstances corresponding to those

(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).
(b) Section 11B was inserted by section 187(2) of the above Act.

referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A

Section 8

COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the 1981 Act) of the Awel y Môr Offshore Wind Farm Order 202[•]in respect of the land to which the notice to treat relates.

(2) But see article 25 (acquisition of subsoil only) of the Awel y Môr Offshore Wind Farm Order 202[•]which excludes the acquisition of subsoil only from this Schedule.

(3) In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

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

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

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

7. If the authority do not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

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

Determination by the Upper Tribunal

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

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

10. In making the determination, the Upper Tribunal must take into account—

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

11. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 9, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

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

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

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

14. Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 9

Article 38

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a), belonging to or maintained by that licence holder;

(a) 1989 c.29.

- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by that gas transporter within the meaning of Part 1 of the Gas Act 1986^(a) for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term, mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
 - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991^(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works, at future date) of that Act^(c),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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;

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

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the onshore works, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus and offshore works

3. This Part does not apply to—

- (a) apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) the offshore works.

Acquisition of land

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

^(a) 1986 c.44.

^(b) 1991 c.56.

^(c) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c.29).

Removal of apparatus

5.—(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 requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' 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 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 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 44 (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 44 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker 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 the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

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

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part, 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 44 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

- (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 that 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 or along the authorised project for which the alternative apparatus is to be substituted.

(3) 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.

Retained apparatus

7.—(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 5(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

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

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is 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, the provisions of this Part apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(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 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.

Expenses and costs

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses agreed with the undertaker in advance and reasonably 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 5(2).

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

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

- (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, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must 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 must 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 must 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) must, 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.

9.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any such works referred to in paragraph 5(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 and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Miscellaneous

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

PART 2

FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG (DC)

1. For the protection of DC referred to in this Part 2 of Schedule 9, the following provisions shall, unless otherwise agreed in writing between the undertaker and DC, have effect.

2. In this Part of this Schedule:

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

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

“clearance area” means the area of land:

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

(b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is 300mm in diameter or more.

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

“draft specification” means a detailed plan, cross-section and description of the works to be prepared by the undertaker (including, without limitation, a method statement and risk assessment setting out the intention in respect of the works, construction methods and programmes, position of the affected DC apparatus and intended works;

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

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

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

“WIA 1991” means the Water Industry Act 1991 c.56 as amended;

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

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

3.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any DC apparatus or its accessories or override or extinguish any easement or other interest of DC or acquire any land or other interest of DC identified in the book of reference or create any new rights over the same otherwise than by agreement with DC (not to be unreasonably withheld or delayed) 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 DC’s rights to access DC apparatus or accessories but subject always to paragraphs 6 and 7 of this Part and to the undertaker giving DC 28 days notice of such interference.

Precedence of the WIA 1991

4.—(1) Regardless of any provision of this Order and this Schedule the undertaker shall comply fully with all provisions of the WIA 1991 in relation to any use of, any connection with or any

actions or omissions which in any way affect the DC apparatus and nothing in this Order shall release the undertaker from the requirement to comply with the provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DC apparatus, including without limitation:

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

(2) The arbitration provisions at article 44 of this Order shall not apply where DC uses a warrant of entry in accordance with the provisions of the WIA 1991.

Protection of DC apparatus

5.—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 4(k), the undertaker shall submit to DC written notice together with a draft specification. For the purposes of preparing the draft specification DC shall, following a written request and subject to such reasonable conditions as may be imposed, provide the undertaker with copies of such plans and records of its apparatus as may be held by DC.

(2) DC shall examine the draft specification submitted under sub-paragraph 5(1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph 5(2) shall be repeated where those amendments are not accepted by the undertaker). For the avoidance of doubt, DC's proposed amendments may include such reasonable requirements for the alteration (including but not limited to the extension of DC apparatus) or otherwise for the protection of DC apparatus, or for securing access to it and if after the expiry of 28 days DC has not communicated approval or disapproval, DC is deemed to have approved the plans as supplied.

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

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

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

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

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

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

Co-Operation

6.—(1) In the event that either the undertaker or DC (for the purpose of this paragraph 6 “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 DC to carry out its statutory functions, the parties shall use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party's works. In respect of the references to ‘work’ and ‘works’ in this sub-paragraph 7(1), to the extent that this refers to ‘work’ or ‘works’ to be undertaken by DC, the definition of works in paragraph 2 of this Part does not apply.

(2) Subject to paragraph 8, differences or disputes arising between the undertaker and DC under this Schedule shall, unless otherwise agreed in writing between the undertaker and DC, be determined by arbitration in accordance with article 44 (arbitration) of the Order.

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

Emergency Works

7.—(1) The undertaker is permitted to carry out emergency works as defined in the New Roads and Street Works Act 1991 provided that it first notifies DC of the proposed emergency works. For the avoidance of doubt, in the event that DC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 10 shall apply.

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

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

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

Damage to DC apparatus

8.—(1) If, for any reason or in consequence of the construction of any of the works, any damage is caused to any DC apparatus (other than DC apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works), or there is any interruption in any service provided, or in the supply of any goods, by DC, the undertaker shall—

- (a) bear and pay on demand accompanied by an invoice or claim by DC the cost reasonably and properly incurred and documented by DC in making good any damage or restoring the supply; and
 - (b) make reasonable compensation to DC for any other expenses, loss, damages, penalty or costs incurred by DC, by reason or in consequence of any the damage or interruption.
- (2) Nothing sub-paragraph (1) imposes any liability on the undertaker with respect of—
- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of DC, its officers, employees, contractors or agents; and / or
 - (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.
- (3) DC shall give the undertaker reasonable notice of any such claim or demand and no settlement, admission of liability or compromise or demand shall be made without the consent of the undertaker.
- (4) Nothing in this Part shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and DC in respect of any DC apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.
- (5) DC must use its reasonable endeavours to mitigate in whole or in part and to minimise any claims, costs, expenses, losses, damages, demands, and penalties to which the indemnity under this paragraph 8 applies. If requested to do so by the undertaker, DC shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 8 for claims reasonably incurred by DC.

PART 3

FOR THE PROTECTION OF NATIONAL GRID

Application

1. The provisions of this Part have effect for the protection of National Grid unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

2.—(1) In this Part—

“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 electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) and for the purposes of this Part includes the use and maintenance of the authorised development and construction of any works authorised by 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, requires 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” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor company;

“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; and

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

- (a) will or may be situated over, or within 15 metres measured in any direction of, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; or
- (c) includes in relation to any electricity apparatus any activity that is referred to in development near overhead lines EN43-8 and HSE's guidance note 6 “Avoidance of Danger from Overhead Lines”.

3. Except for paragraphs 4 (apparatus of National Grid in streets subject to temporary stopping up), 9 (retained apparatus: protection of National Grid as electricity undertaker), 10 (expenses) and 11 (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 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in streets subject to temporary stopping up

4.—(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 (temporary restriction of use of streets), if National Grid has any apparatus in the street or accessed via that street National Grid is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding a temporary restriction up under article 12, National Grid is at liberty at all times to take all necessary access across any such street 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 stopping up or diversion is in that street.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid which will not unreasonably be withheld

Acquisition of land

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

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation 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 prevail.

(3) Any agreement or consent granted by National Grid under paragraph 9 or any other paragraph of this Part must not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any Order land in which any apparatus is placed, that apparatus must not be removed under this Part and any right of National Grid to maintain that apparatus in that land must 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)

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 28 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 must, subject to sub-paragraph (3) afford to National Grid to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by 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 or land secured by 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 to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part must 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.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to or secures National Grid facilities and rights in land for the construction, use, maintenance and protection 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 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) 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, the matter may be referred to arbitration under paragraph 15 (arbitration) and the arbitrator must 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, article 44 (arbitration) applies.

Retained apparatus: Protection of National Grid as Electricity Undertaker

9.—(1) Not less than 56 days before the commencement of any authorised development that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise and to which paragraph 7(2)(a) or 7(2)(b) applies, the undertaker must submit to National Grid a plan 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 15 metres measured in any direction of any apparatus, or which involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and 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) must in addition to the matters set out in sub-paragraph (2) include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; 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-paragraph (2) or (3) applies until National Grid has given written approval of the plan so submitted.

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

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

(6) In relation to a work to which sub-paragraph, (2) or (3) applies, 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 to which this paragraph applies must only be executed in accordance with the plan submitted under sub-paragraph or as relevant sub-paragraph (2), (3) or (6) as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) 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 is entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out either by itself 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 applies and National Grid must give 42 days' notice of such works from the date of submission of a plan in line with sub-paragraph (2), (3) or (6) (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, this Part applies as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) 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 work, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) If after the expiry of 28 days beginning with date on which a plan was submitted for approval under sub-paragraphs (1), (2) or (3) National Grid has not communicated approval or disapproval, National Grid is deemed to have approved the plans as supplied.

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

- (a) comply with sub-paragraphs (6), (7) and (8) in so far as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (13) at all times.

(13) 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 "Avoiding danger from overhead power lines".

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 60 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses agreed in advance with the undertaker 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 Part including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 7(3);
- (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.

(2) There will be deducted from any sum payable under sub-paragraph the value of any apparatus removed under the provisions of this Part 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—

- (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 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part 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 will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will 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 will 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 will 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 will, if the works including the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on

National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part 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 it) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part 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 purpose 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 will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly 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 other than arising from any default by National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike 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) will 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, employees, contractors or agents; and
- (b) any authorised development or any other works authorised by this Part carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or article 6 (benefit 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-paragraph (b) are subject to the full terms of this Part including this paragraph in respect of such new apparatus.
- (c) Any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

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

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Part or by agreement in writing between the undertaker and National Grid, nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.—(1) Where in consequence of the proposed construction of any of the authorised development the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraphs 9, National Grid must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

14. If in consequence of the agreement reached in accordance with paragraph 6 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 National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraphs 7(2), 7(4), and 9 any difference or dispute arising between the undertaker and National Grid under this Part must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 44 (arbitration).

Notices

16. The plans submitted to National Grid by the undertaker pursuant to paragraphs must be sent to National Grid Plant Protection at plantprotection@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.

PART 4

FOR THE PROTECTION OF SP MANWEB AS ELECTRICITY UNDERTAKER

Application

1. The following provisions have effect for the protection of SP Manweb unless otherwise agreed in writing between the undertaker and SP Manweb.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to enable SP Manweb to fulfil its statutory functions in a manner no less efficient than previously (to the reasonable satisfaction of SP Manweb);

“apparatus” means electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by SP Manweb together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SP Manweb 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;

“authorised development” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Part of this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement must 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 interests 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;

“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” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SP Manweb 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;

“SP Manweb” means SP Manweb PLC

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which:

- (a) will or may be situated over, or within 15 metres (measured in any direction) of any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise;
- (b) is reasonably likely to adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise; and/or
- (c) include any of the activities that are referred to in SP Manweb’s policies for development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

On Street Apparatus

3. Except for paragraphs 7, 8 and 9 of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SP Manweb, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SP Manweb are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

4.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire any land interest or apparatus or override any easement or other interest of SP Manweb otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) 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 SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(3) No agreement or consent granted by SP Manweb under any other paragraph of this Part of this Schedule constitutes agreement under sub-paragraph (1).

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of SP Manweb to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of SP Manweb in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any specified 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 SP Manweb at least 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 SP Manweb reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to SP Manweb to its satisfaction (taking into account paragraph 6(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by 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, SP Manweb must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of or land secured by 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 SP Manweb and the undertaker.

(5) SP Manweb must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SP Manweb 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) 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 SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SP Manweb facilities and rights in land for the construction, use, maintenance and protection 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 SP Manweb and must be no less favourable on the whole to SP Manweb than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by SP Manweb.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SP Manweb 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 SP Manweb 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 will be referred to arbitration in accordance with paragraph 13 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SP Manweb 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, article 44 (arbitration) applies.

Retained apparatus: Protection of SP Manweb as Electricity Undertaker

7.—(1) Not less than 56 days before the commencement of any specified work that is near to or will or is reasonably likely to affect any apparatus, the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to SP Manweb a plan of the works to be executed and seek from SP Manweb details of the underground extent of their electricity tower foundations.

(2) In relation to specified 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 to SP Manweb under sub-paragraph (1) must include a method statement and show and describe—

- (a) the exact position of the specified works;
- (b) the level at which the specified works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (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

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until SP Manweb has given written approval of the plan so submitted provided that SP Manweb must not unreasonably delay notification of its approval or disapproval.

(4) Any approval of SP Manweb required under sub-paragraph (2)—

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

(5) If after the expiry of 56 days SP Manweb has not communicated approval or disapproval, SP Manweb is deemed to have approved the plans as supplied.

(6) In relation to any work requiring the submission of a plan under sub-paragraph (1), SP Manweb 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 and SP Manweb must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to SP Manweb.

(7) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and SP Manweb and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4), (6), (8) or (9) by SP Manweb for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SP Manweb will be entitled to watch and inspect the execution of those works.

(8) Where SP Manweb reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SP Manweb's reasonable satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required

and SP Manweb must give 56 days' notice of such works from the date of submission of a plan pursuant to sub-paragraph (1), (2) or (6) (except in an emergency).

(9) If SP Manweb in accordance with sub-paragraphs (7) or (9) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

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

(11) The undertaker must 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 the SP Manweb notice as soon as is reasonably practicable and a plan of those works and must—

- (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 SP Manweb's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SP Manweb on demand all reasonable charges, costs and expenses reasonably incurred by SP Manweb in direct consequence of the execution of any authorised development including without limitation in respect of: —

- (a) any costs reasonably incurred by or compensation properly paid by SP Manweb in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by SP Manweb as a consequence of SP Manweb;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 5(3); and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SP Manweb;
- (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 (including any temporary protective works and their removal);
- (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 will 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 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, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SP Manweb by virtue of sub-paragraph (1) will 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 will 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will 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 SP Manweb in respect of works by virtue of sub-paragraph (1) must, 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 SP Manweb any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any 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 it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of 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 the authorised development) or property of SP Manweb, or if there is any interruption in any service provided, or in the supply of any goods by SP Manweb, or SP Manweb becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand accompanied by an invoice or claim from SP Manweb the cost reasonably and properly incurred by SP Manweb in making good such damage or restoring the supply; and
- (b) indemnify SP Manweb for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from SP Manweb, by reason or in consequence of any such damage or interruption or SP Manweb becoming liable to any third party as aforesaid other than arising from any default of SP Manweb

provided that at all times SP Manweb will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by SP Manweb on behalf of the undertaker or in accordance with a plan approved by SP Manweb or in accordance with any requirement of SP Manweb as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan (or as otherwise agreed between the undertaker and SP Manweb pursuant to paragraph 8).

- (3) Nothing in sub-paragraph (1) will 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 SP Manweb, its officers, employees, contractors or agents;
 - (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by SP Manweb as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 6 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus; and / or
 - (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.
- (4) SP Manweb must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering its representations.

Enactments and agreements

10. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SP Manweb and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and SP Manweb in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

11.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or SP Manweb requires the removal of apparatus under paragraph 5(2) or SP Manweb makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SP Manweb’s undertaking and SP Manweb must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

12. If in consequence of the agreement reached in accordance with paragraph 4(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable SP Manweb to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13. Save for differences or disputes arising under paragraphs 5(2), 5(4), 6(1) and 7 any difference or dispute arising between the undertaker and SP Manweb under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SP Manweb, determined by arbitration in accordance with article 44 (arbitration).

PART 5

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the operator in question.

2. In this Part—

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

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

“the electronic communications code” has the same meaning as in section 106(b) (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

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

(b) an electronic communications network which the undertaker is providing or proposing to provide;

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

“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 (infrastructure system) of that code; and

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

3. The exercise of the powers conferred by article 29 (statutory undertakers) are subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

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

(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 the authorised development), 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 agreed by the undertaker in advance and 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 and, if such consent is withheld, the undertaker 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 must be referred to and settled by arbitration under article 44 (arbitration).

(a) 2003 c.21.

(b) Section 106 was amended by section 4 of the Digital Economy Act 2017.

(5) This Part 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 (street works in England and Wales) 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 project.

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

PART 6

FOR THE PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Network Rail and, where paragraph 13 applies, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993^(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006^(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Part Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network

(a) 1993 c.43.
(b) 2006 c.46.

Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised project under this Order.

4.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 44 (arbitration).

(2) The approval of the engineer under sub-paragraph must not be unreasonably withheld or delayed, and if after 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated disapproval of those plans and the grounds of disapproval—

- (a) the undertaker may serve on the engineer written notice requiring the engineer to communicate approval or disapproval within a further period of 28 days beginning with the date on which the engineer receives written notice from the undertaker; and
- (b) if by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer is deemed to have approved the plans as supplied.

(3) If after the expiry of 28 days beginning with the date on which written notice was served on the engineer under sub-paragraph, Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unreasonable delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and—

- (a) such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker, in either case without unreasonable delay; and
- (b) the undertaker must not commence the construction of the specified works in question until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

5.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 4(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and

- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any interference or obstruction referred to in subparagraph (1)(d) is caused by the carrying out of, or in consequence of, the construction of a specified work, the undertaker must, regardless of any approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, contractors or agents or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its employees, contractors or agents.

6. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

7. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

8.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe and efficient operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail.

(2) If Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions which have been reasonably incurred by Network Rail.

(3) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work that in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, regardless of any approval of the specified work under paragraph 4(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(4) The engineer must, in respect of the sums referred to in this paragraph and paragraph 9(a), provide such details of the formula or method of calculation by which those sums have been calculated as the undertaker may reasonably require.

(5) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

9. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses agreed in advance with the undertaker and reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker under paragraph 4(3) or in constructing any protective works under paragraph 4(4);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer, need to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

10. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as to not adversely affect railway property.

11. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

12. Any additional expenses that Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the date on which this Order is made by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be paid by the undertaker to Network Rail.

13.—(1) The undertaker must—

- (a) pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part which may be occasioned to or reasonably incurred by Network Rail—
 - (i) by reason of the construction or maintenance of a specified work or its failure; or
 - (ii) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged on a specified work; and
- (b) indemnify Network Rail and keep Network Rail indemnified from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.

(2) The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or its employees, contractors or agents) excuse the undertaker from any liability under this Part.

(3) Network Rail must give the undertaker reasonable written notice of any claim or demand made against Network Rail that the undertaker may be liable to pay under this Part and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(4) The sums payable by the undertaker under sub-paragraph (1) if relevant include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail

must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (1) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (4) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that train operator under sub-paragraph (5).

(7) In this paragraph—

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1)

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

14. Network Rail must, on receipt of a request from the undertaker, provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 13) and with such information as may enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part (including any claim relating to those relevant costs).

15. In the assessment of any sums payable to Network Rail under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

16. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans or the land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

17. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

18. The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 6 (benefit of the order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

19. The undertaker must, no later than 28 days from the date that the documents referred to in article 40 (certification of plans etc.) are certified by the Secretary of State, provide a set of those documents to Network Rail in an electronic format.

SCHEDULE 10

Article 33, 34

REMOVAL OF HEDGEROWS

PART 1

REMOVAL OF HEDGEROWS

In the County of Denbigshire:

<i>(1)</i> <i>Grid coordinates</i>		<i>(2)</i> <i>Identifier</i>	<i>(3)</i> <i>Grid coordinates</i>		<i>(4)</i> <i>Identifier</i>
<i>Easting</i>	<i>Northing</i>		<i>Easting</i>	<i>Northing</i>	
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303490.1055	381310.6278	10a	303710.5880	381216.4533	10b
303807.8720	381203.4258	11c	303882.3816	381228.3244	11d
303895.3744	381226.2307	12a	303914.1387	381239.6365	12b
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303519.7901	381144.0378	18c	303601.0972	381005.4255	18d
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303869.7446	380292.9473	27a	303869.7690	380291.0761	27b
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301992.6462	373912.9277	144a	302091.2795	373907.0990	144b

PART 2

REMOVAL OF IMPORTANT HEDGEROWS

In the county of Denbigshire

<i>(1)</i> <i>Grid coordinates</i>		<i>(2)</i> <i>Identifier</i>	<i>(3)</i> <i>Grid coordinates</i>		<i>(4)</i> <i>Identifier</i>
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301329.3939	374747.0765	101a	301309.6110	374638.0282	101b
301161.6436	374590.3224	105a	301158.2411	374585.2414	105b
301166.7782	374571.3288	106a	301283.0116	374473.2354	106b
301162.5366	374566.1094	107a	301246.0330	374488.4123	107b
301150.8697	374563.7360	108a	301116.9195	374467.2253	108b
301037.6991	374514.0069	109a	301117.1940	374472.9876	109b
300969.3214	374532.8325	110a	301115.2139	374462.8914	110b
300924.5375	374427.5555	111a	300791.6201	374133.1351	111b
300689.2556	374015.4074	112a	300993.1389	374050.8012	112b
301078.1072	374365.3944	113a	300968.8765	373907.8090	113b
301221.3716	374398.3799	114a	301056.5277	374274.2700	114b
301005.5984	374014.0326	115a	301063.7304	373920.3772	115b
300967.9757	373904.1307	117a	301142.4425	373918.4309	117b
300743.3942	373751.4498	123a	300778.6163	373793.0664	123b
300828.3441	373619.4934	124a	300875.7020	373657.6045	124b
301110.0994	373518.5962	131a	301069.4548	373465.5816	131b
301269.3706	373633.6656	132a	301252.2281	373553.6398	132b
301250.3550	373550.3273	133a	301240.5413	373535.5265	133b
301239.0375	373533.6646	134a	301205.0121	373495.2077	134b
301386.9960	373645.5296	135a	301374.0034	373402.4933	135b
301308.3203	373454.5191	136a	301248.9954	373393.8751	136b
301240.2741	373386.0923	137a	301212.3840	373356.8455	137b
301517.2126	373640.7633	138a	301426.2316	373420.1446	138b

SCHEDULE 11

Article 3

APPROVAL OF MATTERS SPECIFIED IN REQUIREMENTS

Applications made under requirements

1. Where an application has been made to the relevant planning authority for any agreement or approval required pursuant to a requirement included in this Order, the relevant planning authority must give notice to the undertaker of their decision, including the reasons, on the application, within a period of 13 weeks beginning with—

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

Further information

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

(2) If the relevant planning authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 21 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement indicates that consultation must take place with a consultee the relevant planning authority must issue the consultation to the requirement consultee within 5 working days of receipt of the application. Where the consultee requires further information they must notify the relevant planning authority in writing specifying the further information required within 21 days of receipt of the consultation. The relevant planning authority must notify the undertaker in writing

specifying any further information requested by the consultee within 5 working days of receipt of such a request.

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

Provision of information by Consultees

3.—(1) Any consultee who receives a consultation under paragraph 2(3) must respond to that request within 28 days from receipt unless sub paragraph (2) of this paragraph applies.

(2) Where any consultee requests further information in accordance with the timescales set out in paragraph 2(3) then they must respond to the consultation within 10 working days from the receipt of the further information requested.

Fees

4.—(1) Where an application is made to the relevant planning authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (Wales) Regulations 2015(a) (or any regulations replacing the same) is to be paid by the undertaker to the relevant planning authority in accordance with these regulations.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of the application being rejected as invalidly made.

Appeal

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

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions; or
- (b) within the time period specified in paragraph 1.

(2) The is to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person (“the appointed person”) to determine the appeal and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) the relevant planning authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within ten working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten working days of receipt of written representations pursuant to sub-paragraph (2)(c); and
- (e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (2)(d).

(a) S.I 2015/1522(W.179)

(3) The appointment of the person pursuant to sub-paragraph (2)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to consider the appeal, the appointed person must notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must make any notification and set the date for the receipt of such further information having regard to the timescales in sub-paragraph (2).

(5) Any further information required under sub-paragraph (4) must be provided by the appeal party from whom the further information was requested to the appointed person and other appeal parties, the relevant planning authority and any consultee required to be consulted pursuant to the requirement the subject of the appeal on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten working days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e).

(6) On an appeal under this sub-paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not).

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this article, it is to be deemed to be an approval for the purpose of Schedule 11 as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Welsh Government’s ‘Development Management Manual Section 12 Annex: Award of costs’ or any circular or guidance which may from time to time replace it.

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to article 44 (arbitration) of the Order.

(2) The Parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the Parties. Any dispute which is not resolved amicably by the senior management of the Parties within twenty business days of the dispute arising, or such longer period as agreed in writing by the Parties, will be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration will be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Time periods

2.—(1) All time periods in these Arbitration Rules will be measured in business days and this will exclude weekends, bank and public holidays.

(2) Time periods will be calculated from the day after the Arbitrator is appointed which will be either—

- (a) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the Arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the Arbitrator being appointed, the Claimant must provide both the Respondent and the Arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the Claimant’s statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent must provide the Claimant and the Arbitrator with—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the Claimant’s statements, comments on the Claimant’s expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 5 days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—

- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The Arbitrator will make an award on the substantive difference based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within 5 days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the Arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator must direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

(5) A decision will be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

(6) There will be no process of examination and cross-examination of experts, but the Arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 20 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and
- (c) the form and content of a joint report will be as directed by the Arbitrator and must be provided at least 5 days before the hearing.

(7) Within 10 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator will take these submissions into account in the Award.

(8) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(10) The Arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given is to be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996(a), including the non-mandatory sections, save where modified by these Rules.

(2) There will be no discovery or disclosure, except that the Arbitrator has the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and/or procedure—

- (a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

Costs

6.—(1) The costs of the Arbitration will include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Subject to sub-paragraph (3), the Arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be confidential and will only be publically disclosed where required by law or with the agreement of both parties.

(2) The Arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph prevents any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of an offshore wind farm generating station located approximately 11 km from the coast of Denbighshire, together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 40 (certification of plans) together with a copy of any guarantee or alternative form of security approved by the Secretary of State pursuant to article 31 (funding), may be inspected free of charge at the offices of RWE at Windmill Hill Business Park, Whitehill Way, Swindon Wiltshire, SN5 6PB.



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