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STATUTORY INSTRUMENTS

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**2015 No. 1386**

**INFRASTRUCTURE PLANNING**

**The Swansea Bay Tidal Generating Station Order 2015**

*Made* - - - - *9th June 2015*

*Coming into force* - - *30th June 2015*

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

The application has been examined by a Panel, which has made a report to the Secretary of State under section 74(2) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Panel, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(2) and has had regard to the documents and matters referred to in section 105(2) of the 2008 Act.

The Secretary of State is satisfied that the special category land (as defined in article 37 of the Order), when burdened with the order rights (as defined in that article), 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 giving effect to the proposals comprised in the application with modifications.

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

**PART 1**

**Preliminary**

**Citation and commencement**

**1.** This Order may be cited as the Swansea Bay Tidal Generating Station Order 2015 and comes into force on 30th June 2015.

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(1) 2008 c. 29.

(2) S.I. 2009/2263; relevant amending instruments are S.I. 2012/635 and 2012/787.

## Interpretation

### 2.—(1) In this Order—

- “1961 Act” means the Land Compensation Act 1961(3);
- “1965 Act” means the Compulsory Purchase Act 1965(4);
- “1980 Act” means the Highways Act 1980(5);
- “1990 Act” means the Town and Country Planning Act 1990(6);
- “1991 Act” means the New Roads and Street Works Act 1991(7);
- “2004 Act” means the Energy Act 2004(8);
- “2008 Act” means the Planning Act 2008;
- “2009 Act” means the Marine and Coastal Access Act 2009(9);
- “AB Ports” means Associated British Ports(10) (company number ZC000195) being the harbour authority for the Ports of Swansea and Port Talbot;
- “access and public rights of way plans” means the plans certified by the Secretary of State as the access and public rights of way plans for the purposes of this Order;
- “authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);
- “book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “carriageway” has the same meaning as in the 1980 Act;
- “commence” means begin to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, investigations for the purpose of assessing ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements; and “commencement” must be construed accordingly;
- “compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;
- “demolition plan” means the plans certified as the demolition plan by the Secretary of State for the purposes of this Order;
- “design and access statement” means the document with that title submitted with the application for this Order and certified as the design and access statement by the Secretary of State for the purposes of this Order;
- “environmental statement” means the environmental statement submitted with the application for this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order;
- “harbour authority”, in relation to a harbour, means the harbour authority that has a statutory duty to manage, maintain or improve the harbour;

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(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 1980 c. 66.

(6) 1990 c. 8.

(7) 1991 c. 22.

(8) 2004 c. 20.

(9) 2009 c. 23.

(10) The registered office of Associated British Ports is Aldwych House, 71-91 Aldwych, London WC2B 4HN.

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

“kV” means kilovolts;

“land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation for the works comprised in the authorised development shown on the works plans;

“local planning authority” has the same meaning as in the 1990 Act<sup>(11)</sup>;

“maintain” includes inspect, repair, refurbish, replace, adjust, alter and also includes (in respect of a constituent part of a work but not the whole of a work) remove, clear, refurbish, reconstruct, decommission, demolish, replace and improve any part of the authorised development, but does not include any activity (other than an activity authorised by or under this Order) that is “EIA development” as defined in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009<sup>(12)</sup>; and “maintenance” must be construed accordingly;

“MW” means megawatts;

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

“Order land” means the land identified by plot numbers on the land plans that is within the Order limits and described in the book of reference;

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

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981<sup>(13)</sup>;

“planning drawings” means the drawings certified by the Secretary of State as the planning drawings for the purposes of this Order;

“relevant planning authority” means the City and County of Swansea Council in relation to land for which it is the local planning authority for the time being under the 1990 Act and Neath Port Talbot County Borough Council in relation to land for which it is the local planning authority for the time being under the 1990 Act; and “relevant planning authorities” means both of them;

“Requirement” means a Requirement set out in Part 3 (Requirements) of Schedule 1; and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of the same number in that Part;

“street” means a street within the meaning of section 48 of the 1991 Act together with land on the verge of a street or between 2 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;

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

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

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

“undertaker” has the meaning given in article 6 (benefit of Order);

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

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<sup>(11)</sup> See section 1(1B).

<sup>(12)</sup> S.I. 2009/2263.

<sup>(13)</sup> 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

“works plans” means the plans certified as the works plans by the Secretary of State 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 air-space above its surface.

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

(4) Grid references in this Order are references to points on the Ordnance Survey National Grid.

(5) In this Order, “includes” must be construed without limitation.

## PART 2

### Principal powers

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

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

(2) The authorised development must be constructed—

- (a) within the Order limits;
- (b) in the lines or situations shown on the works plans;
- (c) in respect of the limits of deviation applicable to specific works as shown on the works plans, within those limits of deviation.

(3) In constructing or maintaining the authorised development, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation, subject to the maximum dimensions set out in Part 2 (dimensions of structures) of Schedule 1;
- (b) deviate vertically from the levels shown on works plans 2.2.11A to 2.2.16A (the marine works seawall sections) to any extent downwards as may be found necessary or convenient.

(4) In the case of conflict between the works plans or the plans or drawings set out in Schedule 7 (documents to be certified) and the works as set out in Parts 1A and 1B of Schedule 1 or the maximum dimensions set out in Part 2 of that Schedule, the description of the works in Schedule 1 are to prevail, and the maximum dimensions must not exceed those set out in Part 2 of that Schedule.

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

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

(2) This article authorises the maintenance of the authorised development within the Order limits only.

#### **Operation of generating station, etc.**

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

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

## **Benefit of Order**

- 6.—(1) Subject to paragraph (2), the relevant provisions are for the benefit of the undertaker only.
- (2) The undertaker may, with the consent of the Secretary of State,—
- (a) transfer to another person (the “transferee”) any or all of the benefit of the relevant provisions and such related statutory rights as may be agreed between the undertaker and the transferee; or
  - (b) grant to another person (the “lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the relevant provisions and such related statutory rights as may be agreed between the undertaker and the lessee.
- (3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by Tidal Lagoon (Swansea Bay) plc<sup>(14)</sup> (company number 08141301).
- (4) In this Order, “undertaker” means—
- (a) in relation to a relevant provision or related statutory rights, Tidal Lagoon (Swansea Bay) plc or, where the benefit of a relevant provision or related statutory rights are transferred or granted under paragraph (2), any person who for the time being has the benefit of the provision or related statutory rights;
  - (b) in the case of any other provision, Tidal Lagoon (Swansea Bay) plc or any other person who for the time being has the benefit of the provision under section 156 (benefit or order granting development consent) of the 2008 Act.
- (5) In this article, “relevant provision” means any of the following—
- (a) articles 9 to 11;
  - (b) articles 13 to 37;
  - (c) article 47.

## **Guarantees in respect of payment of compensation, etc.**

- 7.—(1) The authorised development must not be commenced, and the undertaker must not exercise the powers in articles 24 to 37, until—
- (a) subject to paragraph (3), security of £10.5 million has been provided in respect of the liabilities of the undertaker to pay compensation under this Order; and
  - (b) the City and County of Swansea Council has approved the security in writing.
- (2) The security referred to in paragraph (1) may include, without limitation, any 1 or more of the following—
- (a) the deposit of a cash sum;
  - (b) a payment into court;
  - (c) an escrow account;
  - (d) a bond provided by a financial institution;
  - (e) an insurance policy;
  - (f) a guarantee by a person of sufficient financial standing (other than the undertaker).
- (3) The City and County of Swansea Council may agree to the substitution of a different sum to that of £10.5 million referred to in paragraph (1), having regard to the liabilities of the undertaker to pay compensation under this Order existing at the time of the approval referred to in that paragraph.

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<sup>(14)</sup> The registered office of Tidal Lagoon (Swansea Bay) plc is Suite 6 J Shed, Kings Road, Swansea SA1 8PL.

- (4) The authorised development must not be commenced until—
- (a) the undertaker has provided to the City and County of Swansea Council written evidence (which may comprise a written certificate given by a professional firm) of—
    - (i) the construction contracts in respect of Works No. 1a, 1b and 2a and a contract for the procurement of hydroturbines for installation in Work No. 2a; and
    - (ii) financial provision to secure the delivery of the works and procurement referred to in paragraph (i); and
  - (b) the City and County of Swansea Council has given written confirmation that it is satisfied that such financial provision is sufficient.
- (5) The undertaker must pay to the City and County of Swansea Council the reasonable and proper costs, charges and expenses that the City and County of Swansea Council may reasonably incur in obtaining legal or financial advice in respect of giving the confirmation of satisfaction referred to in paragraph (3)(b).
- (6) The City and County of Swansea Council is to have no liability to pay compensation in respect of the compulsory acquisition of land or otherwise under this Order.

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

**8.—(1)** Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(15)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1) (d), (e), (fb), (g), (ga) or (h) of that Act, no order is to be made, and no fine is to 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 site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974<sup>(16)</sup>;
- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided;
- (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and is attributable to the use of the authorised development in accordance with a noise monitoring scheme agreed with the relevant planning authority as described in Requirement 18 (monitoring of noise during construction); or
- (d) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) 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.

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<sup>(15)</sup> 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

<sup>(16)</sup> 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

## PART 3

### Streets

#### Street works

9.—(1) The undertaker may, for the purposes of constructing the authorised development, enter on so much of any of the streets set out in Schedule 2 (streets subject to street works) as is within the Order limits between the numbered and lettered points shown on the access and public rights of way plans and may—

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

(3) Sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) Nothing in this article authorises the breaking up or opening of the carriageway of the A483 Fabian Way without the prior written approval of the local highway authority.

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

#### Temporary stopping up of streets

10.—(1) Subject to paragraph (4), the undertaker, for the purposes of constructing the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) prevent persons from passing along the street.

(2) Where the undertaker prevents persons from passing along the street, the undertaker must provide reasonable access for pedestrians and vehicular traffic going to or from premises abutting or served by a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the streets set out in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the access and public rights of way plans, in column (3) of that Schedule.

(4) The undertaker must not temporarily stop up, alter or divert—

- (a) the streets set out as mentioned in paragraph (3) without first consulting the local highway authority; and
- (b) any other street without the consent of the local highway authority, which may attach reasonable conditions to any consent including as to notice to be given.

(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) Nothing in this article authorises the stopping up of the carriageway of the A483 Fabian Way without the prior written approval of the highway authorities responsible for the maintenance and control of that highway.

#### Access to works

- 11.** The undertaker may, for the purposes of carrying out the authorised development,—
- (a) form and lay out means of access, or improve existing means of access, in the locations set out in columns (1) and (2) of Schedule 4 (access to works); and
  - (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

#### Agreements with street authorities

- 12.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) any stopping up, alteration or diversion of a street authorised by this Order; or
  - (b) the carrying out in the street of any of the works referred to in article 9(1) (street works).
- (2) Such an agreement may, without limiting paragraph (1),—
- (a) make provision for the street authority to carry out any function under this Order that relates to the street in question;
  - (b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### Supplemental powers

#### Discharge of water

**13.—**(1) Subject to Requirements 5 (Construction Environmental Management Plan), 6 (Adaptive Environmental Management Plan) and 11 (operational surface and foul water drainage), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, operation or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(17) (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 the relevant drainage body(18); and such consent may be given subject to such terms and conditions as those persons may reasonably impose, but must not be unreasonably withheld.

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(17) 1991 c. 56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(18) “Drainage body” is defined in section 108 of the Water Resources Act 1991.



- (4) The undertaker must not make any opening into any public sewer or drain except—
  - (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse.
- (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 any groundwater activity or water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010(19).
- (8) In this article—
  - (a) “public sewer or drain” means a sewer or drain that belongs to Natural Resources Wales, an internal drainage board, a local authority or a sewerage undertaker(20);
  - (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(21) have the same meaning as in that Act.

### **Protective work to buildings**

- 14.—(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 5 years beginning with the day on which that part of the authorised development is first opened for use.
  - (3) For the purpose of determining how the functions 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 purposes 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 right under paragraph (1) to carry out protective works to a building;
    - (b) a right under paragraph (3) to enter a building and land within its curtilage;
    - (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

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(19) S.I. 2010/675. “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

(20) “Sewerage undertaker” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).

(21) 1991 c. 57. Amended by sections 100(1) and 120(1) of, paragraph 128 of Schedule 22 to, and Schedule 24 to the Environment Act 1995 (c. 25).

(d) a right 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 that right and, in a case falling within sub-paragraph (a) or (c), the notice must specify the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(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 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 50 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use 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 10(2) of the 1965 Act (further provision as to compensation for injurious affection).

(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) 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.

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

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

- (a) survey or investigate the land;
- (b) without limiting 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 limiting sub-paragraph (a), carry out ecological or archaeological investigations on the 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 on entering the land, produce written evidence of the 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) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority,
- but such consent must not be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

## PART 5

### Tidal works

#### **Application of Marine and Coastal Access Act 2009**

**16.**—(1) Articles 17 to 19 are subject to the provisions of Part 4 of the 2009 Act and any licence granted pursuant to that Part and are without prejudice to the powers of the Welsh Ministers under that Part.

(2) No provision of this Order obviates the need to obtain a marine licence under Part 4 of the 2009 Act or to comply with the conditions of any marine licence.

#### **Right to dredge**

**17.**—(1) The undertaker may, for the purposes of constructing, operating and maintaining the authorised development, from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the land within the Order limits as adjoin or are near to the authorised development and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995(22)) from time to time dredged by it.

(2) No such materials are to be laid down or deposited in contravention of the provisions of any enactment as respects the disposal of waste or dredged arisings.

(3) The undertaker must consult with AB Ports before exercising the rights conferred on it by this article.

(4) This provision does not confer any power on the undertaker to deposit dredged arisings in any place and is subject always to the provisions of article 16 of this Order.

#### **Abatement of tidal works abandoned or destroyed**

**18.**—(1) Where a tidal work is abandoned, or falls into decay, the Welsh Ministers may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its proper condition, to such an extent and within such limits as the Welsh Ministers think proper.

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(22) 1995 c. 21.

(2) Where a work consisting partly of a tidal work and partly of works on or over the land above the level of high water is abandoned or falls into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Welsh Ministers may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Welsh Ministers may take whatever steps the Welsh Ministers consider appropriate to achieve the result required by the notice; and any expenditure incurred by the Welsh Ministers is to be recoverable from the undertaker.

### **Survey of tidal works**

**19.**—(1) If the Welsh Ministers or the harbour authority for the Port of Swansea or Neath consider it expedient to do so, the Welsh Ministers may order, or the harbour authority may undertake, a survey and examination of a tidal work or of the site on which it is proposed to construct the work, and any expenditure incurred by the Welsh Ministers or the harbour authority in any such survey and examination is recoverable from the undertaker.

(2) Where the Welsh Ministers or the harbour authority for the Port of Swansea or Neath propose to order or undertake a survey and examination referred to in paragraph (1), the Welsh Ministers or the harbour authority must do so in compliance with such reasonable stipulations relating to health, safety, security or confidentiality as the undertaker may impose.

### **Lights on tidal works, etc. during construction**

**20.** The undertaker must at or near—

- (a) a tidal work, including any temporary work; and
- (b) any plant, equipment or other obstruction placed in connection with the authorised development within the area of seaward construction activity,

during the whole time of construction, reconstruction, extension, enlargement, replacement or relaying, exhibit every night from sunset to sunrise and in periods of restricted visibility such lights, if any, and take such other steps for the prevention of danger to navigation as the Welsh Ministers and the harbour authority for the Port of Swansea or Neath may from time to time direct.

### **Provision against danger to navigation**

**21.** In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker must as soon as reasonably practicable notify Trinity House and the harbour authorities for the Ports of Swansea and Neath and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House or the harbour authority for the Port of Swansea or Neath within its area may from time to time direct.

### **Permanent lights on tidal works**

**22.** After the completion of a tidal work, the undertaker must at the outer extremity of it exhibit every night from sunset to sunrise and in periods of restricted visibility such lights, if any, and must take such steps, if any, for the prevention of danger to navigation as Trinity House or the harbour authority for the Port of Swansea or Neath within its area may from time to time direct.

### **Safety of navigation**

**23.**—(1) No marine works comprised in the authorised development are to be commenced until a scheme to secure safety of navigation has been submitted to and approved in writing by the harbour

authority for the Port of Swansea in consultation with Trinity House, the Maritime and Coastguard Agency, the harbour authority for the Port of Neath and the City and County of Swansea Council.

- (2) The approved scheme must make provision for—
- (a) the promulgation of notice to mariners;
  - (b) additional aids to navigation;
  - (c) retention of safety vessels during construction;
  - (d) the installation of protective dolphin piles comprised in Work No. 2c;
  - (e) the relocation of any pilot station affected by the authorised development;
  - (f) reasonable marine access to be maintained into and out of the rivers Neath and Tawe including for small craft at high tides;
  - (g) the circumstances where Her Majesty's Coastguard should be notified of any matter; and
  - (h) an emergency response and co-operation plan.

(3) The authorised development is to be carried out in accordance with the approved scheme except to the extent that a variation to the approved scheme is agreed by the harbour authority for the Port of Swansea after consulting the persons mentioned in paragraph (1).

## PART 6

### Powers of acquisition

#### Compulsory acquisition of land

24.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it, excluding the land identified by the following plot numbers on the land plans—

- (a) 01135;
- (b) 02055;
- (c) 04080;
- (d) 04085;
- (e) 04090;
- (f) 04095;
- (g) 04100;
- (h) 05035.

(2) From the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, the land or the part of it that is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

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

- (4) This article is subject to—
- (a) article 26 (private rights of way);
  - (b) article 28 (compulsory acquisition of rights);
  - (c) article 30 (acquisition of subsoil only);
  - (d) article 32 (rights under or over streets);

- (e) article 33 (temporary use of land for carrying out authorised development);
- (f) article 35 (protection of Coal Authority);
- (g) article 53 (Crown rights).

### **Power to override easements and other rights**

**25.**—(1) Any authorised activity that takes place within the Order limits (whether the activity is undertaken by the undertaker, by its successor pursuant to a transfer or lease under article 6 (benefit of Order), by any person deriving title under them or by any of their servants or agents) may be undertaken, notwithstanding that it involves—

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

(2) In this article “authorised activity” means—

- (a) the erection, construction, carrying out or maintenance of any building, work or other thing on land or over, in or under tidal waters or tidal lands; or
- (b) the use of any land, tidal waters or tidal lands,

that is authorised under any other provision of this Order and done in accordance with its terms.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Where any interest or right to which this article applies is interfered with, or any restriction as to the user of land arising by virtue of a contract breached, by any authorised activity in accordance with the terms of this article, the interest, right or restriction is abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences, but only to the extent required for, or necessary or incidental to, the authorised development.

(5) In respect of any interference, breach, abrogation or discharge in pursuance of this article, compensation is payable in accordance with section 152 of the 2008 Act (compensation in case where no right to claim in nuisance), to be determined in case of dispute under Part 1 of the 1961 Act.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person that is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

(7) This article does not apply—

- (a) in respect of any agreement, restriction, obligation or other provision contained in a deed made pursuant to section 106 of the 1990 Act or section 278 of the 1980 Act; or
- (b) where any agreement expressly excludes its application.

(8) This article does not apply in relation to a “relevant right” within the meaning of section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.).

### **Private rights of way**

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

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

whichever is the earlier, but only to the extent required for or necessary or incidental to the authorised development.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker that, being within the limits of land that may be acquired shown on the land plans, is required for the purposes of this Order are extinguished on the appropriation of the land by the undertaker for any of those purposes.

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

(4) Any person who suffers loss by the extinguishment or 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.

(5) This article does not apply in relation to any right of way that is a “relevant right” within the meaning of section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.).

(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;

(ii) the undertaker’s appropriation of it;

(iii) the undertaker’s entry onto it; or

(iv) the undertaker taking temporary possession of it,

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

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way 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 of way 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.

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

**27.—**(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

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

(b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 29 (application of Compulsory Purchase (Vesting Declarations) Act 1981)(23).

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(23) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of,

(2) The authority conferred by article 33 (temporary use of land for carrying out authorised development) ceases at the end of the period referred to in paragraph (1), but 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**

**28.**—(1) The undertaker may, for the purpose set out in the book of reference, acquire compulsorily the existing rights, and create and acquire compulsorily the new rights, described in the book of reference and shown on the land plans excluding—

- (a) rights described as temporary rights in the book of reference;
- (b) rights over land identified by the plot numbers on the land plans referred to in article 24(1) (compulsory acquisition of land).

(2) From the date on which a compulsory acquisition notice is served or the date on which a new right is vested in the undertaker, whichever is the later, the land over which the new right is acquired is discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of the new right.

(3) Subject to section 8 of the 1965 Act (as substituted by article 31 (acquisition of part of certain properties)), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

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

(5) Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments referred to in that Schedule in their application in relation to the compulsory acquisition under this Order of a right over land by the creation of a new right.

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

**29.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(24) applies as if this Order were a compulsory purchase order.

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

(3) In section 3 (preliminary notices), omit subsection (1) and substitute—

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

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

(4) In that section, in subsection (2)—

- (a) omit “(1)(b)” and substitute “(1)”; and
- (b) after “given” insert “and published”.

(5) In that section, omit subsections (5) and (6) and substitute—

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and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

(24) 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to the 1981 Act which are not relevant to this Order.



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

- (a) the person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) the person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds 1 month.”

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

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

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

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

#### **Acquisition of subsoil only**

**30.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 24(1) (compulsory acquisition of land) 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 article 31 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

#### **Acquisition of part of certain properties**

**31.**—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (the “owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (the “land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (the “land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must be referred to the Tribunal unless the undertaker agrees to take the land subject to the counter-notice.

(5) If on such a reference the Tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or

- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the Tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice is to be deemed to be a notice to treat for that part.

(7) If on such a reference the Tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land that the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the Tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is to be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the Tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the Tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

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

**32.—**(1) The undertaker may enter upon 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 that forms part of a building fronting onto the street.

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

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

### **Temporary use of land for carrying out authorised development**

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works or permanent works comprised within the authorised development (including the provision of means of access) and temporary buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of that Schedule.

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

(3) The undertaker may not, without the agreement of the owner of the land, remain in possession of any land under this article after the end of the period of 1 year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 6 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 28 (compulsory acquisition of rights).

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary buildings and works and restore the land to the reasonable satisfaction of the owner of the land; but the undertaker is not required to replace a building removed under this article or restore the land on which any works have been constructed under paragraph (1)(d).

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

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

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

- (a) acquiring new rights over any part of that land under article 28; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 30 (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 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Nothing in this article removes the need for a marine licence under Part 4 of the 2009 Act.

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

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

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

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

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

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

(4) The undertaker may remain in possession of land under this article only 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 buildings and 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 rising from the exercise in relation to the land of the powers under this article.

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

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) Nothing in this article removes the need for a marine licence under Part 4 of the 2009 Act.

(12) In this article, “maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

### **Protection of Coal Authority**

**35.** This Order does not confer any powers to acquire any coal measures or land in which the Coal Authority has any proprietary estate or interest.

### **Protection of riverine fisheries**

**36.—**(1) The undertaker must pay to the owners, occupiers or persons otherwise having a proprietary right of fishing in streams injuriously affected by the construction, operation or maintenance of the authorised development, or otherwise by the exercise of the powers conferred on the undertaker by this Order, compensation for any damage sustained by such persons by reason of the construction, operation or maintenance or the exercise of the powers.

(2) Compensation under paragraph (1) must be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Special category land**

**37.—**(1) On the exercise by the undertaker of the order rights, so much of the special category land as may be required for the purposes of the order rights is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of the order rights.

(2) In this article—

“order rights” means the powers or rights exercisable over the special category land by the undertaker under article 28;

“special category land” means the land identified as forming part of an open space in the book of reference.

## **PART 7**

### **Miscellaneous and general**

#### **Railway and navigation undertakings**

**38.—**(1) Subject to the following provisions of this article, the undertaker may not under article 9 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act),—

- (a) is under the control or management of, or is maintainable by, a railway undertaker or a navigation authority; or
- (b) forms part of a level crossing belonging to such an undertaker or authority or to any other person,

except with the consent of the undertaker or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld or delayed.

(4) In this article, “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

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

**39.**—(1) This article applies to—

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

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

(2) The operation of any agreement to which this article applies is not prejudiced by any enactment or rule of law regulating the rights and obligations of landlords and tenants.

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

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

### **Operational land for purposes of Town and Country Planning Act 1990**

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

### **Felling or lopping of trees**

**41.**—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development or the Order land, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

### **Application of Energy Act 2004 in relation to decommissioning**

**42.**—(1) The undertaker must submit to the Secretary of State a programme for decommissioning the parts of the authorised development below the mean low water mark (a “decommissioning programme”).

(2) The decommissioning programme—

- (a) must set out measures to be taken for decommissioning the parts of the authorised development below the mean low water mark;
- (b) must contain an estimate of the expenditure likely to be incurred in carrying out those measures;
- (c) must make provision for the determination of the times at which, or the periods within which, those measures will have to be taken;
- (d) if it proposes that the authorised development will be wholly or partly removed from a place below the mean low water mark, must include provision about restoring that place to the condition that it was in before the construction of the authorised development; and
- (e) if it proposes that the authorised development will be left in position at a place below the mean low water mark or will not be wholly removed, must include provision about whatever continuing monitoring and maintenance will be necessary.

(3) The authorised development must not be commenced until the Secretary of State has approved the decommissioning programme.

(4) The provisions of the 2004 Act referred to in paragraph (5) apply as if those provisions were contained in this Order and as if—

- (a) the authorised development were a “relevant object” within the meaning of Chapter 3 (decommissioning of offshore installations) of Part 2 of that Act;
- (b) references in the provisions of that Act referred to in paragraph (5) to a decommissioning programme submitted to or approved by the Secretary of State under that Chapter included references to a decommissioning programme submitted to or approved by the Secretary of State under this article; and
- (c) the reference in section 112A(2)(a) of that Act to a person who has been, or may be, given a notice under section 105(2)(a) of that Act in relation to a relevant object included a reference to the undertaker.

(5) The provisions are—

- (a) section 106 (approval of decommissioning programmes);
- (b) section 108 (reviews and revisions of decommissioning programmes);
- (c) section 109(1) (carrying out of decommissioning programmes);
- (d) section 110 (default in carrying out decommissioning programmes), except for subsections (3) and (4);
- (e) section 110A (protection of funds held for purposes of decommissioning);
- (f) section 110B (section 110A: supplemental);
- (g) section 112 (duty to inform Secretary of State), except for subsections (2)(a) and (7);
- (h) section 112A (power of Secretary of State to require information and documents), except for subsections (8) and (9).

(6) A person must not disclose information obtained by virtue of a notice under section 112A(1) of the 2004 Act (as applied by paragraph (4)) unless the disclosure—

- (a) is made with the consent of the person by or on behalf of whom the information was provided;

- (b) is for the purpose of the exercise of the Secretary of State's functions under this Order, the Electricity Act 1989<sup>(25)</sup> or Part 4 of the Petroleum Act 1998<sup>(26)</sup>; or
- (c) is required by or under an enactment.

### **Development consent obligation**

**43.**—(1) The undertaker may enter into an obligation relating to the authorised development under section 106 of the 1990 Act in respect of any land within the Order limits even though the undertaker may not be the owner of such land or any interest in it; and this paragraph applies to such an obligation entered into before or after this Order is made.

(2) From the date on which the undertaker acquires any land that is subject to an obligation to which paragraph (1) applies, section 106 of the 1990 Act applies as if the undertaker had been the owner of the land at the date of entering into the obligation.

(3) In this article and article 44, “obligation” has the same meaning as “planning obligation” in section 106 of the 1990 Act.

### **Development consent obligation: enforcement**

**44.**—(1) Where the undertaker has entered into an obligation relating to the authorised development under section 106 of the 1990 Act, despite sections 1 and 106(3) and (9)(d) of that Act, the document recording the obligation may provide that a local planning authority, other than the local planning authority within whose area the land bound by the obligation is situated, may enforce the obligation.

(2) The document may so provide in relation to all or some of the obligations recorded in it.

### **Ancient Monuments and Archaeological Areas Act 1979**

**45.** This Order has effect as a consent under the Ancient Monuments and Archaeological Areas Act 1979<sup>(27)</sup> in respect of the authorised development in respect of the pillboxes shown on planning drawings nos. 2.4.42 and 2.4.43 and tank traps located on the existing Swansea Port sea wall irrespective of the date upon which any such features are included in a Schedule under that Act.

### **Licences relating to water, etc.**

**46.** The requirement under section 25 of the Water Resources Act 1991<sup>(28)</sup> to obtain a licence before constructing, altering, repairing or removing any impoundment works does not apply to the authorised development.

### **Byelaws**

**47.**—(1) The undertaker may from time to time make and enforce byelaws regulating the use and operation of the authorised development, the maintenance of order on and about the authorised development and the conduct of all persons including employees of the undertaker while on and about the authorised development.

(2) Without limiting paragraph (1), byelaws made under this article may provide for—

- (a) regulating the admission and access to the seawalls forming part of the authorised development, in particular in the vicinity of the Swansea University Bay Campus;

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(25) 1989 c. 29.

(26) 1998 c. 17.

(27) 1979 c. 46.

(28) 1991 c. 57.



- (b) preventing and removing obstructions or impediments within the authorised development;
  - (c) preventing damage or injury to any goods, vehicles, plant, machinery, property or persons within the authorised development;
  - (d) regulating the activities of divers, surfers, water skiers and other persons engaged in recreational pursuits within the authorised development;
  - (e) prohibiting persons in or entering the authorised development from smoking in open spaces; and
  - (f) preventing nuisances on the authorised works.
- (3) Byelaws made under this article may—
- (a) provide for the creation of offences in respect of their breach, or the breach of any condition, requirement or direction imposed, made or given under them, that are triable summarily and whose maximum penalty is a fine not exceeding level 3 on the standard scale;
  - (b) relate to the whole or to any part of the authorised development; and
  - (c) make different provision for different parts of the authorised development or in relation to different classes of vehicles.
- (4) Byelaws made by the undertaker under this Order come into force only when they have been confirmed by the Welsh Ministers.
- (5) Before applying for any byelaws to be confirmed under this article, the undertaker must publish a notice of its intention to apply for the byelaws to be confirmed—
- (a) on 1 occasion in the London Gazette; and
  - (b) on 2 occasions in successive weeks in a local newspaper circulating in the area of the authorised development.
- (6) The notice must state—
- (a) the place at which and the times during which a copy of the proposed byelaws is to be available for public inspection; and
  - (b) that persons may make representations about the proposed byelaws to the Welsh Ministers in writing within the period specified in the notice being a period of not less than 28 days after the date of publication of the last notice required by paragraph (5).
- (7) For at least 28 days after the publication of the last notice required by paragraph (5), a copy of the proposed byelaws must be available for public inspection without payment at the principal office of the undertaker in the area of the authorised development at all reasonable times.
- (8) The undertaker must supply a copy of the proposed byelaws or part of the proposed byelaws to a person who applies for it on payment of a reasonable charge.
- (9) During the period specified in the notice in accordance with paragraph (5)(b), any person may make representations about the proposed byelaws to the Welsh Ministers in writing.
- (10) The Welsh Ministers may, after the expiry of the period specified in the notice in accordance with paragraph (6)(b), confirm with or without modification or may refuse to confirm any of the proposed byelaws submitted and may fix a date on which any byelaws so confirmed are to come into force, and, if no date is so fixed, the byelaws come into force after the expiry of 28 days after the date on which they were confirmed.
- (11) The Welsh Ministers may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as the Welsh Ministers may consider appropriate for the purpose of defraying any administrative expenses incurred by the Welsh Ministers in connection with confirmation, modification or refusal.

(12) A copy of any byelaws confirmed under this article must be printed and must be available for public inspection without payment at the principal office of the undertaker in the area of the authorised development at all reasonable times, and the undertaker must at the request of any person supply that person with a copy of such byelaws on payment of a reasonable charge.

(13) Byelaws under this article may vary or revoke any byelaws in respect of the authorised development made under any other provision at any time.

(14) Byelaws under this article may be varied or revoked by subsequent byelaws under this article.

### **Procedure in relation to certain approvals, etc.**

**48.**—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a Requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the Requirement were a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) the provisions of any orders, rules or regulations that provide in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission insofar as those provisions are not inconsistent with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and any other orders, rules or regulations made under the 2008 Act.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it provides in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989.

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

**49.**—(1) The undertaker must, as soon as practicable after the date on which this Order is made, submit to the Secretary of State copies of the documents listed in Schedule 7 (documents to be certified) for certification that they are true copies of the plans or 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.

### **Arbitration**

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

### **Saving for Trinity House**

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

## Protection of interests

52. Schedule 8 (protective provisions) has effect.

## Crown rights

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

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or the Welsh Government or held in trust for Her Majesty for the purposes of a government department or the Welsh Government without the consent in writing of the government department or the Welsh Government; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land that is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) 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.

## Provisions for effect of Adaptive Environmental Management Plan

54.—(1) Where any Requirement provides for an AMEP as defined in Part 3 of Schedule 1, and any provision of that AEMP makes matters of dispute between the undertaker, any relevant planning authority and Natural Resources Wales subject to arbitration under this Order, article 50 (arbitration) applies.

(2) Where under the terms of an AMEP it is necessary for the officers of any relevant planning authority or Natural Resources Wales to attend any meetings of any group or to review any documents, the undertaker is liable for the reasonable and proper costs of those officers in respect of those activities.

Signed by authority of the Secretary of State for Energy and Climate Change

9th June 2015

*Giles Scott*  
Head of National Infrastructure Consents  
Department of Energy and Climate Change

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## SCHEDULE 1

Article 3

Authorised development, ancillary and necessary works and Requirements

## PART 1A

## Authorised development

A nationally significant infrastructure project being an offshore generating station as defined in sections 14(1)(a) and 15(3) of the 2008 Act comprising—

**In Swansea Bay and the City and County of Swansea and the County Borough of Neath Port Talbot**

*Work No. 1a* — A western seawall crested by a road and footway commencing at 266417E; 189134N as shown on works plans 1, 4, 7 and 9 approximately 2700m in length and incorporating—

- (a) a low voltage substation;
- (b) provision of and for lighting;
- (c) one or more slipways, jetties, access points and associated hardstanding for boats used in connection with the operation and maintenance of the generating station;
- (d) a landscaped area where the seawall makes landfall; and
- (e) operation and maintenance facilities within the seawall together with sufficient foundation areas and pilings to enable construction of an offshore building centred on grid reference 266218E; 189338N containing an administration and engineering suite.

*Work No. 1b* — An eastern seawall crested by a road and footway commencing at 266420E; 189131N approximately 6800m in length and incorporating provision of and for lighting.

*Work No. 2a* — A turbine and sluice gate housing structure located between 266417E; 189134N and 266410E; 189131N as shown on works plans 2, 6, 8 and 9, measuring approximately 410m in length and 67.5m in width containing up to 16 variable speed hydro-turbines with a gross combined installed generating capacity of up to or equal to 320MW, and up to 10 sluice gates and incorporating—

- (a) a switch room;
- (b) scour protection;
- (c) associated electrical equipment and transformers;
- (d) dividing structures and wingwalls; and
- (e) a maximum of 4 external gantry cranes and such infrastructure works or plant as may be necessary for the purposes of operating and maintaining the sluices and turbines.

The Works No. 1a, 1b and 2a are also to incorporate localised widening of the seawall to provide—

- (a) viewing areas; and
- (b) siting locations for works of public art.

*Work No. 5a* — A 275kV grid connection laid underground consisting of 3 single phase cables and other electric cables connecting Work No. 2a (266120E; 189499N) to 266970E; 191821N.

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*Work No. 6a* — A work consisting of the construction of a jetty or mole and floating pontoons and piles or dolphins, located from 267494E; 191898N to 266998E; 191498N.

*Work No. 6b* — A work consisting of construction of onshore operation and maintenance facilities comprising—

- (a) an onshore building centred on 267129E; 191741N comprising—
  - (i) a hatcheries and laboratories;
  - (ii) maintenance workshops and spares stores;
  - (iii) garaging for operation and maintenance vehicles;
  - (iv) storage for boats associated with the operation and maintenance of the generating station;
  - (v) a control room;
  - (vi) staff office accommodation; and
  - (vii) staff welfare facilities; and
- (b) provision to allow construction within the area of Work No. 6b of—
  - (i) outdoor parking spaces for operation and maintenance vehicles and essential visitors to the generating station;
  - (ii) outdoor emergency access facilities to enable rapid access to the authorised works.

*Work No. 7a* — A new internal access road comprising 2 carriageways together with a fence in between running in a north-easterly direction from 267048E; 191928N to 269035E; 192887N.

*Work No. 7g* — A work for a new access track at the eastern seawall landfall running in an easterly direction from 269016E; 192826N to 270275E; 192496N.

And in connection with such works and to the extent that they do not otherwise form part of any such work, further development including mitigation, being part of the nationally significant infrastructure project comprising—

- (a) temporary construction works, including workshops and stores, storage areas for rock armour, working areas, laydown areas, construction sites, internal site roads and vehicle parking facilities;
- (b) to the extent required for mitigation, the landscaping elements of the Broad Seaward Park, Narrow Seaward Park, and Landward Ecological Park as described in the design and access statement, including works to existing wave protection walls;
- (c) habitat creation (including mariculture);
- (d) navigational aids;
- (e) bunds, embankments, swales, landscaping and boundary treatments and fencing;
- (f) to the extent shown on the demolition plan, the alteration, removal, clearance, refurbishment, reconstruction, decommissioning and demolition of any buildings and structures within the Order limits;
- (g) the provision of footpaths;
- (h) lighting columns and lighting; and
- (i) safety/emergency points.

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## PART 1B

### Ancillary and necessary works

Works within the Order limits to the extent necessary and ancillary to the construction, operation and maintenance of a nationally significant infrastructure project and forming part of that project being an offshore generating station as defined in sections 14(1)(a) and 15(3) of the 2008 Act comprising—

*Work No. 2b* — A temporary offshore work consisting of a sediment berm cofferdam for the purposes of constructing Work No. 2a as shown on works plan 2.2.8B and having wall heights not exceeding 16.5m above Chart Datum.

*Work No. 2c* — An offshore work comprising up to 15 dolphin piles with lights, cable booms or floating buoys in between located up to 500m seaward from the outer edge of Work No. 2a (266113E; 189484N) for the purposes of demarcating a safety zone as shown on works plan 2.2.8B and works section 2.2.16A.

*Work No. 2d* — An offshore work comprising buoys (with or without lights) with or without floating booms located up to 500m landward from the outer edge of Work No. 2a (266123E; 189494N) for the purposes of demarcating a safety zone as shown on works plan 2.2.8B and works section 2.2.16A.

*Work No. 3* — An offshore work consisting of a buried pipeline the uppermost surface of which shall be below the level of the surrounding sea bed for the extension of the existing long sea sewage outfall from 268408E; 189407N to 268030E; 187224N and replacement of diffuser apparatus.

*Work No. 4* — An offshore work consisting of a new eastern channel training wall in the River Neath providing for the relocation of Monkstone lights from 270138E; 190336N to 271033E; 191419N which work must not exceed the heights shown on works section 2.2.15A.

*Work No. 9* — Reclamation of land to establish a saltmarsh habitat area of up to 5ha and coastal grassland habitat area of up to 3ha including pedestrian and cycle routes and structures as shown on works plans 2.2.2B and 2.2.3B.

*Work No. 10* — Reclamation of land to establish a new coastal grassland and dune area of up to 11 ha. close to the landfall of Work No. 1b as shown on works plan 2.2.3B incorporating—

- (a) a beach area;
- (b) a visitor/information point to serve Crymlyn Burrows SSSI as shown on planning drawing 2.4.58; and
- (c) extension of the existing surface drainage outfalls serving Fabian Way, and to the extent that they do not otherwise form part of any numbered work, further ancillary works comprising—
  - (d) oyster spatting ponds;
  - (e) installation of services along eastern and western seawalls, including electricity and telecommunications;
  - (f) buoys, beacons, fenders and other navigational aids, warning or ship impact protection works;
  - (g) temporary land places, moorings and other means of accommodating vessels in the construction of the works set out in Part 1A and this Part; and
  - (h) works to alter the position of apparatus on, over or under tidal waters or tidal lands within the Order limits.

## PART 2

### Dimensions of structures

<i>(1)</i> Structure	<i>(2)</i> Maximum height (metres) above ordnance datum	<i>(3)</i> Maximum width/length
Seawall	9 (14m above chart datum)	N/A
Turbine and sluice gate housing structure	11.5 (16.5m above chart datum)	128m/410m
Operation and maintenance facilities within seawall and foundations and pilings for the offshore building centred on grid reference 266218E; 189338N	(14m above chart datum)	
Onshore building	13.5m	18m/120m
Crymlyn Burrows SSSI visitor information point	12m	Refer to drawing 2.4.58
Gantry cranes	22.5 (27.5m above chart datum)	N/A

## PART 3

### Requirements

#### Interpretation

1. In this Part—

“AEMP” means the Adaptive Environmental Management Plan to be submitted and approved pursuant to Requirement 6;

“authorised development” means the works set out in Parts 1A, 1B and 2 of this Schedule (authorised development, and ancillary and necessary works);

“CEMP” means the Construction Environmental Management Plan to be submitted and approved pursuant to Requirement 5;

“CPTMP” means the construction phase traffic management plan to be submitted and approved pursuant to Requirement 21;

“DCWW” means Dŵr Cymru Cyfyngedig (Company Reference Number: 2366777) whose registered office is at Pentwynn Road, Nelson, Treharris CF46 6LY;

“major event” means an event likely to generate vehicular traffic capable of occupying more than the aggregate number of visitor parking spaces within the authorised development;

“OEMP” means the Operational Environmental Management Plan to be submitted and approved pursuant to Requirement 5;

“operate” means operate the authorised development for generation of electricity for transmission to the national electricity grid following completion of wet commissioning and “operation” and “operating” is to be construed accordingly;

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“OPTMP” means the Operational Phase Travel Management Plan to be submitted and approved pursuant to Requirement 22;

“outline Adaptive Environmental Management Plan” means the outline Adaptive Environmental Management Plan dated 25th November 2014 certified as such by the Secretary of State for the purposes of this Order;

“outline Construction Environmental Management Plan” means the outline Construction Environmental Management Plan dated 25th November 2014 certified as such by the Secretary of State for the purposes of this Order;

“outline construction phase traffic management plan” means the outline construction phase traffic management plan annexed to the outline Construction Environmental Management Plan;

“outline Operational Environmental Management Plan” means the outline Operational Environmental Management Plan dated 4th November 2014 certified as such by the Secretary of State for the purposes of this Order;

“outline operational phase traffic management plan” means the outline operational phase traffic management plan submitted with the application certified as such by the Secretary of State for the purposes of this Order.

#### **Time limits, etc.**

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into effect.

3.—(1) The authorised development must not commence until a construction phasing scheme for the authorised development has been submitted to and approved in writing by the relevant planning authorities. The phasing scheme must set out the sequence of construction of the authorised development and under which requirements approvals are to be sought in whole or in part depending on the contents of the construction phasing scheme.

(2) Where a construction phasing scheme has been submitted to and approved by the relevant planning authorities, the details to be submitted to the relevant planning authorities to discharge any requirement may relate to a particular construction phase only, in order that the construction or operation of that phase may commence in accordance with the approved details for that phase alone. Where details have not been submitted in relation to any particular construction phase, then construction of that phase must not commence until the relevant part of any requirement has been discharged in relation to that phase. Construction must then be carried out in accordance with any relevant approval.

#### **Detailed design**

4.—(1) The authorised development comprised in Works No. 2b, 2c, 2d, 3, 4, 5a, 7a and 7g, must be carried out in accordance with the relevant works plans and planning drawings in Schedule 7.

(2) The authorised development seaward of mean low water springs comprised in Work No. 1a must be carried out in accordance with the relevant works plans and planning drawings in Schedule 7 so far as those drawings refer to works that are within the description of Work No. 1a in Part 1 of Schedule 1.

(3) The authorised development seaward of mean low water springs comprised in Work No. 1b must be carried out in accordance with the relevant works plans and planning drawings in Schedule 7 so far as those drawings refer to works that are within the description of Work No. 1b in Part 1 of Schedule 1.



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(4) The authorised development comprised in Work No. 2a must be carried out in accordance with the relevant works plans and planning drawings in Schedule 7 so far as those drawings refer to works that are within the description of Work No. 2a in Part 1 of Schedule 1.

(5) No authorised development is to commence until the reserved details of the landward parts above mean low water springs of Works No. 1a and 1b and of all other works referred to in Parts 1A and 1B of Schedule 1 have been submitted to and approved by the relevant planning authorities.

(6) Where reserved details have been approved by the relevant planning authorities, the authorised development must be carried out in accordance with those details.

(7) In this Requirement “reserved details” means details of layout, scale, siting, design, dimensions and external appearance.

### **Construction Environmental Management Plans**

**5.—(1)** No authorised development are to commence until a CEMP substantially in accordance with the outline Construction Environmental Management Plan, has been submitted to and approved by the relevant planning authorities in consultation with Natural Resources Wales.

(2) All construction work must be carried out in accordance with the CEMP approved under sub-paragraph (1).

(3) No operation of the authorised development is to commence until an OEMP, substantially in accordance with the outline Operational Environmental Management Plan, has been submitted to and approved by the relevant planning authorities.

(4) Operation of the authorised development must be in accordance with the approved OEMP.

(5) The CEMP and OEMP must include, but not be limited to, mechanisms for the provision and implementation of the following mitigation matters—

- (a) lagoon wardens during the operational phase, whose responsibilities include (but are not limited to) securing the delivery of the OEMP and managing public access;
- (b) a Reptile Strategy which provides for their habitat retention and management, and where necessary, their translocation to suitable receptor sites;
- (c) access for otters, which is to be maintained at all times between the docks, River Tawe and the coastline;
- (d) providing that reversing alarms which are not audible beyond the development site boundaries must be fitted on any Heavy Goods Vehicles (HGVs) and mobile plant that are active during the construction phase during hours of darkness, weekends (Saturdays and Sundays) and bank holidays.

### **Adaptive Environmental Management Plan**

**6.—(1)** No authorised development are to commence until an AEMP, substantially in accordance with the outline Adaptive Environmental Management Plan, has been submitted to and approved by the relevant planning authorities in consultation with Natural Resources Wales.

(2) The approved AEMP must contain provision for the revision from time to time of the monitoring and management measures that it contains in order to achieve the objectives set out in the outline Adaptive Environmental Management Plan.

(3) Construction and operation of the authorised development must be carried out in accordance with the approved AEMP as it subsists from time to time.

(4) The undertaker is to be responsible for the implementation of measures contained in or determined pursuant to the AEMP.

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(5) The AEMP must include mechanisms for the delivery of mitigation to manage restoratively any adverse impacts resulting from the development, to habitats, species and sediment distributions on the Swansea Bay seafront arising from—

- (a) increases in mud deposition within the lagoon;
- (b) increases in windblown sand hazards; and
- (c) increases in saltmarsh vegetation.

(6) The AEMP must include a scheme for the monitoring and management of siltation in the Monkstone Marina.

(7) The AEMP must provide for the appointment of a Core Review Group to include representatives of the undertaker, Natural Resources Wales and the 2 relevant planning authorities and to be chaired by an independent person selected by the Core Review Group.

### **Provision of landscaping**

7.—(1) The authorised development is not to be commenced until a detailed landscaping scheme and associated working programme for the authorised development reflecting the principles of the design and access statement has been submitted to and approved by the relevant planning authorities.

(2) The landscaping scheme must include details of—

- (a) works to existing wave protection walls;
- (b) the location, number, species, size and planting density of proposed planting;
- (c) a planting design on and in the vicinity of Works No. 6a and 6b within the Order land;
- (d) any importation of materials and other operations to ensure plant establishment;
- (e) proposed finished ground levels;
- (f) planting and hard landscaping within the operational areas of the authorised development and the vehicular and pedestrian access, parking and circulation areas;
- (g) the new beaches, saltmarshes and dunesapes to be constructed as part of the authorised development, including the method of construction, plant types, sizing and spacing, and the measures proposed for maintenance of areas;
- (h) minor structures such as signage, refuse or other units and furniture;
- (i) signage and cycle parking facilities on the access roads proposed as part of the authorised development;
- (j) proposed and existing functional services above and below ground, including power and communications cables and pipelines, manholes and supports;
- (k) the specified standard to which the works will be undertaken maintained and managed;
- (l) the proposed term for which long term management is to be undertaken pursuant to Requirement 8(4); and
- (m) a timetable for the implementation of all hard and soft landscaping works.

(3) All planting undertaken pursuant to the landscaping scheme is to comprise—

- (a) species that would also enhance biodiversity and connect habitats; and
- (b) stock of local provenance, where available.

(4) The details to be submitted under sub-paragraph (2) must not include any development or works that are not within the descriptions of the authorised development contained in this Schedule.

### **Implementation and maintenance of landscaping**

8.—(1) All landscaping works must be carried out in their entirety, maintained and managed in accordance with the detailed written landscaping scheme approved under Requirement 7 and to the specified standard.

(2) Any tree or shrub planted as part of the approved detailed landscaping scheme that is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in accordance with the specified standard of maintenance and management in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

(3) If any boundary shrub or vegetation is the subject of localised clearance for the purpose of construction of the authorised development, replacement planting must be undertaken to replace the extent of vegetation lost using locally occurring species to retain the existing vegetation pattern, unless otherwise approved by the relevant planning authority.

(4) Within 2 years from the commencement of operation of the authorised development a long term management plan for the period of operation of the development for the area of the authorised development within the jurisdiction of the City and County of Swansea Council prepared in accordance with the principles set out in the landscaping scheme shall be submitted for the approval of that Council, and all planting and landscaping must then be managed in accordance with the approved plan.

(5) Within 2 years from the commencement of operation of the authorised development a long term management plan for the period of operation of the development for the area of the authorised development within the jurisdiction of the Neath Port Talbot Borough Council prepared in accordance with the principles set out in the landscaping scheme shall be submitted for the approval of that Council, and all planting and landscaping must then be managed in accordance with the approved plan.

### **Highway works**

9.—(1) No phase of the authorised development affecting an existing public highway is to commence until details of the siting, design and layout of the highway works have after consultation and highway authority for the works in question been submitted to and approved by the relevant planning authority.

(2) The highway works must be carried out in accordance with the approved details.

(3) The submitted details are to provide for—

- (a) reinstatement of temporary works upon their completion;
- (b) a site survey to identify pre-existing defects;
- (c) remedy of defects caused during and resulting from the works upon completion; and
- (d) construction of permanent works to adoptable standards.

(4) In this Requirement “the highway works” means the highway works comprised in Works No. 7a.

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

10.—(1) Prior to commencement of each phase of the authorised development, written details of all proposed permanent or temporary fences, walls or other means of enclosure within that phase of the authorised development must be submitted to and approved by the relevant planning authorities.

(2) All construction sites must remain securely fenced at all times during construction of the authorised development in accordance with the approved scheme or schemes.

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

(4) All perimeter fences, walls or other means of site perimeter enclosure for the authorised development approved in accordance with sub-paragraph (1) must be completed prior to commencement of operation in accordance with the approved details.

(5) Such fencing must make provision for—

- (a) the secure fencing of the Port of Swansea;
- (b) fencing and means of access as is required to secure the proper management of access to Crymlyn Burrows SSSI from the authorised development; and
- (c) alternative access routes for otters.

### **Operational surface and foul water drainage**

**11.**—(1) No part of the authorised development shall commence until a written scheme to deal with the details of the surface water drainage system and the sewage system (together, the “operational drainage scheme”) incorporating a sustainable urban drainage system so far as appropriate has been submitted to and approved by the relevant planning authority in consultation with the relevant drainage authority.

(2) The operational drainage scheme shall provide for—

- (a) prior to commencement of development, a survey to be undertaken to identify existing site drainage within the Order limits including old surface water boreholes, disused draining networks from earlier developments and part-demolished sections of existing drainage and the decommissioning of any surface water drainage network or exposed boreholes so identified to the satisfaction of Natural Resources Wales;
- (b) a rainwater harvesting system to be included in the authorised development;
- (c) surface water that has the potential for oil contamination to be passed through oil interceptors;
- (d) measures to avoid risk of spillage of contaminating material;
- (e) the discharge of all aqueous effluents via the drainage system comprised in the authorised development;
- (f) a system to collect and treat run off from stock piles prior to discharge to the surface water drainage system; and
- (g) the avoidance of any tie-in to drains serving the A483 Fabian Way.

(3) The scheme must be implemented in accordance with the approved details prior to operation of the authorised development and maintained during the operation of the authorised development.

### **Contamination and groundwater**

**12.**—(1) Prior to the commencement of each phase of the authorised development a scheme to assess the nature and extent of any contamination on the Order land, and confirmation of whether or not it originates on the Order land must be submitted to and approved by the relevant planning authority in consultation with Natural Resources Wales. The investigation and risk assessment must be undertaken by competent persons in accordance with Land Contamination: A Guide for Developers and the EA/DeFRA Report CLR11 - Model Procedures for Management of Land Contamination and must be submitted as a written report. The written report is to include—

- (a) a desktop study to identify all previous uses on the Order land and potential contaminants on land and controlled waters. The desktop study must establish a “conceptual site mode” (CSM) identifying all plausible pollutant linkages to be assessed;

- (b) a survey of the extent, scale and nature of contamination;
- (c) an assessment of the potential risks to—
  - (i) human health;
  - (ii) ground waters and surface waters;
  - (iii) adjoining land;
  - (iv) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
  - (v) ecological systems; and
  - (vi) archaeological sites and ancient monuments;
- (d) an appraisal of remedial options, and proposal of the preferred remedial options; and
- (e) so far as relevant to land which is the subject of the written report in question, details of how the scheme has taken account of remediation works secured by an agreement under section 106 of the 1990 Act dated 20th November 2009 and made between Neath Port Talbot County Borough Council (1), St Modwen Developments Limited (2), St Modwen Properties PLC (3), BP Chemicals Limited (4) and BP Oil Llandarcy Refinery Limited (5) as well as consultation carried out with Baglan Bay Company Limited (company number 638328).

(2) Prior to the commencement of each phase of the authorised development a remediation scheme to bring the Order land to a condition suitable for the intended use by removing any unacceptable risks to human health, buildings, other property and the natural and historical environment must be submitted to and approved by the relevant planning authority. The remediation scheme must include all relevant works to be undertaken, proposed remediation objectives, remediation criteria and site management procedures. The measures proposed within the remediation scheme must be implemented in accordance with an approved programme of works contained in that scheme.

(3) Prior to operation of the relevant phase of authorised development commencing, a verification report which demonstrates the effectiveness of the agreed remediation works carried out in accordance with this Requirement must be submitted to and approved by the relevant planning authority.

(4) In the event that contamination is found at any time when carrying out the authorised development that was not previously identified, work on the affected area must cease immediately and shall be reported in writing to the relevant planning authority. A Desk Study, Site Investigation, Risk Assessment and where necessary a Remediation Strategy must be undertaken in accordance with Land Contamination: A Guide for Developers. The Desk Study, Site Investigation, Risk Assessment and any Remediation Strategy must be submitted to and approved by the relevant planning authority. Prior to operation of the development, a verification report which demonstrates the effectiveness of the approved remediation must be submitted to and approved by the relevant planning authority.

(5) In this Requirement “Land Contamination - A Guide for Developers” means the document entitled Land Contamination: A Guide for Developers (WLGA, WAG & EAW, 2012) certified as such by the Secretary of State for the purposes of this Order.

### **Storage of materials on site**

**13.**—(1) No part of the authorised development is to be brought into use until a written scheme to deal with handling and onsite storage of process chemicals, cleaning substances, fuels, oils and lubricants on site has been submitted to and approved by the relevant planning authorities.

(2) All such materials must be stored in accordance with the approved scheme.

### **Construction water supply**

14. No part of the authorised development is to be commenced until a building water supply licence has been granted by DCWW for construction of the authorised development.

### **Electrical grid connection works**

15.—(1) No part of Work No. 5a is to be commenced until—

- (a) details of the buried depths of the cable comprised in those works according with the recommendations contained in the ERA report; and
- (b) a scheme and programme for the works, including necessary construction details and locations of laydown areas, with details of specific ecological mitigation; and
- (c) a scheme for the restoration monitoring and aftercare of areas of land disturbed by the construction of those works upon their completion including providing for the areas to be suitable for access by the public,

has been submitted to and approved by the relevant planning authority in consultation with Natural Resources Wales.

(2) Work No. 5a must be carried out in accordance with the approved details and scheme.

(3) In this Requirement, the “ERA report” means ERA report 2015 - 0265 certified as such by the Secretary of State for the purposes of this Order.

### **Archaeology**

16.—(1) No part of the authorised development in any phase is to commence until a programme of archaeological work including a written scheme of investigation has been submitted to and approved by the relevant planning authorities following consultation with Cadw. The written scheme of investigation is to include an assessment of significance and research questions appropriate for investigation and—

- (a) a programme and methodology of site investigation and recording having regard to the on- and offshore nature of the authorised development;
- (b) a programme for post-investigation assessment;
- (c) provision for analysis of the site investigation and recording, as well as retention of historic assets *in situ* where reasonably practicable;
- (d) provision for publication and dissemination of the analysis and records of the site investigation;
- (e) provision to be made for archive deposition of the analysis and records of the site investigation; and
- (f) nomination of a competent person or persons to undertake the works set out within the written scheme of investigation.

(2) No part of the authorised development is to take place other than in accordance with the written scheme of investigation approved under sub-paragraph (1) of this Requirement.

(3) The site investigation and post-investigation assessment are to be completed in accordance with the programme set out in the written scheme of investigation approved under sub-paragraph (1) and provision is to be made in the written scheme of investigation for analysis, publication and dissemination of results and archive deposition.

### **Retention of historic assets**

**17.**—(1) No part of the authorised development is to commence until a written scope of work required for the retention (where reasonably practicable), or (as the case may be in relation to paragraph (b)) relocation, and enhancement of historic assets identified in the written scope of work, including in particular—

- (a) the standing pill boxes, gun emplacement and tank traps situated seaward of Queen’s Dock Swansea, with a buffer zone of 5m, together with suitable landscape treatment; and
- (b) the navigation light situated on the existing Swansea Harbour East Pier,

has been submitted to and approved by the relevant planning authority in consultation with Cadw and the Glamorgan-Gwent Archaeological Trust Ltd.

- (2) The authorised development is to be carried out in accordance with the approved details.

### **Monitoring of noise during construction**

**18.**—(1) No part of the authorised development is to commence until a written scheme providing for the monitoring of noise generated during the construction of the authorised development has been submitted to and approved by the relevant planning authorities.

(2) The scheme must specify the locations at which noise will be monitored, the method of noise measurement (which shall accord with BS 5228 or, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances) and the frequency of submission of data to the relevant planning authorities.

- (3) The authorised development must be carried out in accordance with the approved scheme.

### **Piling**

**19.**—(1) No piling activities relating to those works shown on drawing TLP - SWANSEA BAY - 141003 - VO.2 as certified by the Secretary of State are to commence until a piling method statement according with the annotations of that drawing has been submitted to and approved by the relevant planning authorities in consultation with Natural Resources Wales.

- (2) Piling must be carried out in accordance with the approved method statement.

### **Site waste management plan**

**20.**—(1) No part of the authorised development is to be constructed until a plan for the management and disposal of waste produced as a result of the construction of the authorised development has been submitted to and approved by the relevant planning authorities.

(2) The construction of the authorised development must be carried out in accordance with the approved details.

### **Construction traffic**

**21.**—(1) No part of the authorised development is to commence until a construction phase traffic management plan (CPTMP) substantially in accordance with the outline construction phase traffic management plan has been submitted to and approved in writing by the relevant planning authorities.

- (2) The CPTMP must include provision for—
  - (a) importation of rock armour and sediment for the authorised works only by sea;
  - (b) the public dissemination of contact details for any co-ordinator appointed in respect of the CPTMP;
  - (c) avoidance of access via junctions A9 or A10; and

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- (d) avoidance of Heavy Goods Vehicles entering and leaving the development site between the hours of 0800-0900 and 1600-1730.
- (3) All construction work must be carried out in accordance with the approved CPTMP.

### **Operational traffic**

**22.**—(1) The authorised development must not be operated until a OPTMP, substantially in accordance with the outline operational phase traffic management plan, including identification of a travel plan co-ordinator, has been submitted to and approved by the relevant planning authorities.

(2) The approved OPTMP must make provision for the installation of and collection of data from a suitably located automatic traffic counter provided by the undertaker.

- (3) The authorised development must be operated in accordance with the approved OPTMP.

### **Major events**

**23.**—(1) No major event is to be held at the authorised development unless an overarching Major Event Strategy (“MES”) including identification of a strategy co-ordinator has been submitted to and approved by the relevant planning authorities.

- (2) The MES must also make provision for—

- (a) prior consultation with the relevant planning authority, highway authority, Welsh Ministers and Police as well as the Maritime and Coastguard Agency and RNLI, so far as appropriate;
- (b) submission of subsidiary event-specific Major Event Plans;
- (c) management of pressures on Swansea Beaches and Crymlyn Burrows SSSI (to the extent appropriate);
- (d) any co-ordination of other licensing requirements;
- (e) management of travel and traffic; and
- (f) responsibility for provision of off-site parking and transport between any off-site parking and the authorised development.

- (3) Any event-specific Major Event Plan must include—

- (a) an explanation of why the event constitutes a major event;
- (b) expected number of attendees, participants, competitors, exhibitors and spectators and their expected modes of travel;
- (c) proposed arrangements for the management of vehicular and pedestrian access, including details of off-site parking, any proposed temporary provision of park and ride facilities, drop off and pick up arrangements together with amenity facilities at such locations;
- (d) details of any proposed temporary road closures or other traffic management required;
- (e) proposed car and coach parking arrangements;
- (f) details of liaison proposed to be or held with the police and other relevant first responder services;
- (g) details of measures to control visitor movement and other activity with respect to Crymlyn Burrows SSSI and any designated quiet bird area; and
- (h) the proposed access signage and advertising strategy for each event.

(4) All major events held at the authorised development must be held in accordance with the approved MES and any event-specific Major Event Plan.



### **Construction and security lighting scheme**

**24.**—(1) No phase of the authorised development is to commence until a detailed written construction and security lighting scheme in accordance with the design and access statement has been submitted to and approved by the relevant planning authorities.

- (2) The construction and security lighting scheme must provide for—
- (a) appropriate lighting of any safety zone in place or dredging activity taking place during construction;
  - (b) the avoidance of direct light spill onto open water within the authorised development including the use of fencing to minimise light spill and avoidance of the use of white mercury lamps;
  - (c) the minimisation of light spill, including the use of directional lighting and positioning of lights, baffles, cowls and hoods; and
  - (d) measures to ensure that any such lighting will be directional and sensitive to relevant ecological receptors.
- (3) Construction of the authorised development must be carried out in accordance with the approved scheme.

### **Permanent lighting**

**25.**—(1) No permanent lighting forming part of the authorised development is to be installed in any phase until a detailed written and illustrated permanent lighting scheme substantially in accordance with the principles contained in the design and access statement has been submitted to and approved by the relevant planning authorities.

- (2) The permanent lighting scheme must provide for—
- (a) details of how the lighting design will minimise trespass, glare and spillage;
  - (b) development of appropriate lighting to render the authorised development appropriate to Swansea Bay and its setting; and
  - (c) details of how, where possible, operational lighting will be designed to minimise impacts on relevant ecological receptors as described in the environmental statement.
- (3) The approved scheme must be implemented as part of the authorised development.

### **Flood risk mitigation**

**26.**—(1) No tidal works comprised in the authorised development are to commence until a scheme of mitigation works for the flood risk area at Mumbles has been submitted to and approved in writing by the relevant local planning authority following consultation with Natural Resources Wales.

(2) Construction of Works No. 1a, 2a, and 2b must not commence until the approved scheme of mitigation works for the flood risk area at Mumbles, as referred to in sub-paragraph (1), has been completed.

- (3) The approved scheme must be implemented as part of the authorised development.

### **Fish and shellfish mitigation strategy**

**27.**—(1) No part of the authorised development is to commence until a written strategy for the mitigation of the impacts of the authorised development on fish and shellfish has been submitted to and approved by the relevant local planning authority in consultation with Natural Resources Wales and the relevant port Harbour Authority.

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- (2) The fish and shellfish mitigation strategy must provide for—
  - (a) fish spawning enhancements by introduction of spawning media at locations including the western face of Work No. 1a; and
  - (b) targeted oyster dredge trawls to be undertaken of the proposed dredging areas prior to commencement of construction and the translocation of native oysters.
- (3) In relation to herring, the approved scheme shall provide—
  - (a) for the placing of spawning media under sub-paragraph (2)(a) in the first year of construction of the authorised development; and
  - (b) for the monitoring of the areas where spawning media are placed in the second and third year of construction and thereafter in accordance with frequencies determined under the AEMP.
- (4) In relation to the acoustic, sonar imaging and collision recording devices to be installed in association with the turbines. The scheme shall include—
  - (a) monitoring of turbine impacts upon fish species, including migratory fish and clupeids;
  - (b) calibration of acoustic fish deterrent devices (“AFDs”) prior to commencement of operation to be effective on fish species that are hearing generalists, including sea trout and herring;
  - (c) monitoring to test the effectiveness of AFDs;
  - (d) agreement of acceptable thresholds of impact and further action to be taken if those thresholds are exceeded.
  - (e) measures to be taken when AFDs are non-operational; and
  - (f) provision for review and adaptation of AFDs during the life of the authorised development.
- (5) The provisions of this Requirement are to take precedence over the provisions of the AEMP except where an iteration of the AEMP in accordance with the terms of this Order permits.
- (6) The approved fish and shellfish mitigation strategy and any measures under it are to be implemented and maintained during construction of the authorised development, and operation of the authorised development.

#### **Avian enhancement strategy**

**28.**—(1) No part of the authorised development is to commence until a written strategy of enhancement measures for avian species has been submitted to and approved by the relevant planning authorities in consultation with Natural Resources Wales.

- (2) The avian enhancement strategy shall provide for—
  - (a) provision of an artificial roost within a less disturbed area of the authorised development; and
  - (b) provision of kittiwake ledges on north-eastern front of the new turbine and sluice gate housing structure.
- (3) The approved strategy and any measures under it are to be implemented and maintained during construction and operation of the authorised development.

#### **Habitats creation strategy**

**29.**—(1) No phase of the authorised development is to commence until a written strategy for the creation, monitoring and management of onshore habitats in that phase has been submitted and approved by the relevant planning authorities in consultation with Natural Resources Wales.

- (2) The habitats creation scheme is to provide for—

- (a) creation of artificial dunescape at the base of existing coastal defences and management to reduce impact through public access;
  - (b) creation of an artificial sandy beach at eastern landfall of the authorised development;
  - (c) beach landscaping and design on the western side of the eastern landfall of the authorised development to reduce wind effect;
  - (d) vegetation management to create areas of bare sand and physical intervention to create blow-outs;
  - (e) retention of habitat strips of at least 3m in width associated with the grassland in the lee of existing seawalls south-east of Queen's Dock;
  - (f) creation of grassland along the landward side of the new saltmarsh area comprised in the authorised development following removal of the existing seawall;
  - (g) encouraging colonisation of existing rock armoured sea defences through infilling of large gaps with aggregate and localised topping with sandy spoil/topsoil;
  - (h) creation of a dedicated coastal grassland plot to the seaward side at the south-eastern end of the docks estate with a transition to saltmarsh habitat as well as connectivity to dune habitat towards the east;
  - (i) creation of grassland at the periphery of parking bays at the western end of the authorised development;
  - (j) translocation of grassland turves and reuse of topsoil from areas of species-rich sward to encourage the establishment of coastal grassland habitat in the newly created areas with plants of local provenance;
  - (k) translocation of robust plants or substrates containing target species seeds to holding areas where they can be relocated to newly created habitats on new seawalls; and
  - (l) creation of purpose-designed artificial rocky shore habitat on new seawalls.
- (3) The approved habitats creation strategy and any measures under it are to be implemented in their entirety and maintained during the entirety operation of the authorised development.

### **Honeycomb worm translocation strategy**

**30.**—(1) No part of the authorised development shall be commenced until a written strategy for the translocation of the honeycomb worm (*Sabellaria alveolata*) has been submitted to and approved by the relevant planning authority in consultation with Natural Resources Wales.

(2) The honeycomb worm translocation strategy is to provide for—

- (a) a method statement for the translocation effort;
- (b) identification of temporary or permanent receptor sites;
- (c) translocation of casts to encourage future settlement to locations around the new seawalls;
- (d) provision of rockpools and features similar to bio-blocks to provide biodiversity offset; and
- (e) further remedial action to be implemented in the event of an unsuccessful translocation programme or a detrimental effect upon the adjacent undisturbed honeycomb worm reef.

(3) The approved honeycomb worm translocation strategy and any measures under it are to be implemented and maintained during construction and operation of the authorised development.

### **Other ecological matters**

**31.**—(1) No part of the authorised development is to be commenced until a written strategy to secure the removal or management of Japanese Knotweed and other invasive non-native species

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within areas affected by the authorised development has been submitted to and approved by the relevant planning authorities.

(2) The approved measures are to be implemented during construction and operation of any part of the authorised development.

### **Passive provision for western link**

**32.**—(1) No authorised development is to commence in respect of Work No. 6b until a scheme for safeguarding a future access to the Order land via the eastern bank of the River Tawe has been submitted to and approved by the relevant local planning authority.

(2) The authorised development is to be carried out in accordance with the approved scheme.

### **Turbines**

**33.**—(1) No authorised development is to commence in respect of Work No. 2a until a scheme of works showing—

- (a) details of the turbine and sluice gate housing structure, including associated gantry cranes;
- (b) details of the variable speed hydro-turbines to be installed in the turbine housing and the depth relative to chart datum and ordnance datum at which the turbines are to operate;
- (c) details for installation with the turbines of acoustic fish deterrents and of high resolution sonar imaging and collision recording devices,

has been submitted to and approved by the relevant local planning authority in consultation with Natural Resources Wales.

(2) The authorised development is to be carried out in accordance with the approved scheme.

### **Disposal of dredged arisings and protection of Kenfig SAC**

**34.**—(1) Operation of the authorised development is not to commence until a scheme for the disposal of dredged arisings relating to maintenance of depths within the lagoon formed by the authorised works (“maintenance arisings”) has been submitted to the relevant planning authorities, in consultation with Natural Resources Wales, and approved in writing.

(2) Following commencement of the dredging referred to in sub-paragraph (1) of this Requirement, disposal of maintenance arisings must not take place except in accordance with a scheme approved under sub-paragraph (1) or a marine licence for such disposal granted by Natural Resources Wales.

(3) Any scheme approved under this Requirement may provide for—

- (a) disposal of maintenance arisings at Swansea Outer disposal ground (LU130); or
- (b) disposal of maintenance arisings at another disposal ground.

(4) Where the scheme approved under this Requirement relates to disposal of maintenance arisings at Swansea Outer disposal ground, the approved scheme is to make provision for—

- (a) the collection or augmentation of baseline data for a period of 2 years prior to the commencement of disposal of maintenance arisings in relation to the presence of sand, mud and muddy sand adjacent to the Kenfig shoreline between the northern edge of Margam Moors and Sker Point (“Kenfig Shoreline”);
- (b) a programme of monitoring designed to predict or to identify departure from predicted change to the Kenfig Shoreline as a result of the deposit of maintenance arisings;
- (c) mitigation by the undertaker to prevent or remedy adverse change to the Kenfig Shoreline (which could lead to adverse effects on the Kenfig Special Area of Conservation) as a result

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of the deposit of maintenance arising by the undertaker, which may include but need not be limited to the use of an alternate disposal ground in parallel with or in substitution for the use of Swansea Outer disposal ground particularly where other mitigation measures are not available or appropriate for preventing such effects;

- (d) triggers in response to which mitigation will be secured by the undertaker in the event of change to the Kenfig Shoreline in relation to—
- (i) erosion rate of the sand dune toe;
  - (ii) the profiles of the sand body in frontal dunes (between the seaward toe and a fixed line 20m inland) at intervals identified in the scheme as well as sedimentary characteristics; and
  - (iii) volumes of sand in the area from mean low water to the dune toe, and position of tidal contours on the beach; and
- (e) the review of the scheme and the triggers described above in light of the results of monitoring and other events in accordance with the AEMP referred to in Requirement 6.

(5) Nothing in sub-paragraph (3) of this Requirement is to prevent the undertaker from using or relying upon any scheme of that nature promoted by others relating in whole or in part to the protection or monitoring of the Kenfig SAC.

### **Beach mitigation management**

**35.**—(1) Operation of the authorised development is not to commence until a beach mitigation management strategy for North West Swansea Bay has been submitted to and approved by the relevant planning authority following consultation with Natural Resources Wales.

- (2) The approved strategy, which may comprise part of the AEMP is to include provision for—
- (a) continued regular monitoring of beaches in North West Swansea Bay throughout the operational, decommissioning and post-decommissioning of the authorised development;
  - (b) identification of thresholds for the application of mitigation measures; and
  - (c) flexibility to select the most appropriate mitigation measures from identified options which may include sediment nourishment, sand or mud removal, vegetation removal or spraying, and construction of sand fencing or other form of physical barrier to control wind-blown sand.

(3) The approved scheme is to be implemented by the undertaker during the operation, decommissioning and post-decommissioning phases of the authorised development.

### **Requirement for written approval**

**36.** Where under any of the Requirements the approval or agreement of the Secretary of State, the local planning authority or another person or body is required, that approval or agreement must be given in writing.

**37.** Where approval or agreement is sought in relation to Requirements 26, 27, 34 and 35 approval must only be given by the relevant planning authority following consultation with Natural Resources Wales.

### **Amendments to approved details**

**38.**—(1) With respect to any Requirement which requires the authorised development to be carried out in accordance with the details of a plan, scheme or code approved by the local planning authority or any other person or body, the approved details, or plan, scheme or code are to be taken

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to include any amendments that may subsequently be approved in writing by the local planning authority or that other person or body.

(2) Where such details, plan, scheme or code are required to be approved in consultation with another body, any amendments of that document must also be approved in consultation with that body.

(3) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### **Marine mammal mitigation strategy**

**39.**—(1) No part of the authorised development is to commence until a written strategy for the monitoring and mitigation of the impacts of the authorized development on marine mammals has been submitted to the relevant planning authorities, and in consultation with Natural Resources Wales, approved in writing.

(2) The marine mammal mitigation strategy must provide for—

- (a) monitoring and mitigation to minimise the potential for disturbance to marine mammals during construction and operation;
- (b) monitoring and mitigation measures to minimise the potential for marine mammal collision with the turbines during operation; and
- (c) agreement of thresholds of mortality of marine mammals (potential biological removal), and action to be taken if those thresholds are exceeded, for any given year during the operation of the project.

(3) The approved strategy must be implemented throughout the construction and operation of the authorised development.

(4) The strategy must be reviewed annually unless otherwise agreed in writing by the relevant planning authorities.

(5) No changes to the strategy are to be implemented unless they have been approved in writing by the relevant planning authorities.

### **Section 106 agreement**

**40.**—(1) No part of the authorised development is to commence until an agreement pursuant to section 106 of the Town and Country Planning Act 1990 (a “section 106 agreement”) has been secured between The City and Country of Swansea Council, Neath Port Talbot County Borough Council, AB Ports and the undertaker.

(2) The section 106 agreement mentioned in sub-paragraph (1) may be altered or varied only with the consent of all of The City and Country of Swansea Council, Neath Port Talbot County Borough Council, AB Ports and the undertaker.

(3) The section 106 agreement should reflect that of 8th December 2014, as certified by the Secretary of State.

### **Employment and skills plan**

**41.**—(1) The authorised development shall not commence until an employment and skills plan detailing arrangements to promote employment and skills development opportunities has been

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submitted to and approved in writing by both The City and Country of Swansea Council and Neath Port Talbot County Borough Council.

(2) The plan must include proposals for promoting such opportunities for local residents and the approved employment and skills plan must be implemented and maintained during the construction of the authorised development, and operation of the authorised development.

### Water Framework Directive

**42.**—(1) The authorised development must not commence until a monitoring and management strategy document has been submitted to and approved by Natural Resources Wales, the purpose of such strategy document being to ensure that the authorised development is carried out in compliance with the Water Framework Directive, including any necessary derogation from that Directive.

(2) The “Water Framework Directive” means [Directive 2000/60/EC](#) of the European Parliament and of the Council of 23rd October 2010 establishing a framework for Community action in the field of water policy.

## SCHEDULE 2

Article 9(1)

### Streets subject to street works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street work</i>
City and County of Swansea	Langdon Road between X1 and X2
	Port access road between X3 and X4
	Port access road between X4 and X5
	Port access road from X4 to Baldwin’s Bridge off slip and link road and Fabian Way eastwards from the junction between the two to X6
Neath Port Talbot County Borough	Fabian Way between X6 and X7
	Fabian Way between X7 and X8

## SCHEDULE 3

Article 10

### Streets to be temporarily stopped up

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Neath Port Talbot County Borough	Fabian Way	Between X6 and X7
	Fabian Way	Between X7 and X8
	Wales Coast Path footpath	Between X9 and X10

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SCHEDULE 4

Article 11

Access to works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Access reference on works plans</i>
City and County of Swansea	Access A1 (permanent) Access A2 (permanent) Access A3 (permanent) Access A4 (construction) Access A5 (construction) Access A6 (permanent) Access A7 (permanent) Access A8 (permanent)
Neath Port Talbot County Borough	Access A9 (permanent) Access A10 (construction) Access A11 (construction) Access A12 (construction) Access A13 (construction)

SCHEDULE 5

Article 28

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

**Compensation enactments modified**

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

**Land Compensation Act 1973 modified**

2.—(1) Without limiting paragraph 1, the Land Compensation Act 1973(29) has effect subject to the modifications set out in sub-paragraph (2).

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

- (a) for “land is acquired or taken”, substitute “a right over land is purchased from”;
- (b) for “acquired or taken from him”, substitute “over which the right is exercisable”.

(29) 1973 c. 26. Section 44 was amended by paragraph 13(b) of Schedule 24 to the Highways Act 1980, paragraph 14(d) of Schedule 7 to the Gas Act 1986 (c. 44) and paragraph 23 of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c. 60).



**Compulsory Purchase Act 1965 modified**

3. Without limiting paragraph 1, the 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are 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
- (b) the land over which the right is or is to be exercisable.

## SCHEDULE 6

Article 33

## Land of which temporary possession may be taken

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of plot of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
City and County of Swansea	01005	Dredging works under article 17 and paragraph 93 of Schedule 8
	01006	Dredging works under article 17 and paragraph 93 of Schedule 8
	01007	Dredging works under article 17 and paragraph 93 of Schedule 8
	01008	Dredging works under article 17 and paragraph 93 of Schedule 8
	01010	Dredging works under article 17 and paragraph 93 of Schedule 8
	01011	Dredging works under article 17 and paragraph 93 of Schedule 8
	01012	Dredging works under article 17 and paragraph 93 of Schedule 8
	01015	Dredging works under article 17 and paragraph 93 of Schedule 8
	01020	Dredging works under article 17 and paragraph 93 of Schedule 8
	01025	Dredging works under article 17 and paragraph 93 of Schedule 8
	01035	Dredging works under article 17 and paragraph 93 of Schedule 8
	01040	Dredging works under article 17 and paragraph 93 of Schedule 8
	01045	Dredging works under article 17 and paragraph 93 of Schedule 8

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of plot of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
	01056	Provision of a working area and construction site related to Works No. 1a, 5a and 6a
	01059	Provision of a working area and construction site related to Works No. 1a, 5a and 6a
	01061	Provision of a working area and construction site related to Works No. 1a, 5a and 6a
	01062	Dredging works under article 17 and paragraph 93 of Schedule 8
	01152	Provision of a working area and construction site related to Works No. 1a and 5a
	02050	Provision of a working area and construction site related to Works No. 7a, 9 and 10
	02070	Provision of a working area and construction site related to Works No. 7a, 9 and 10
	02075	Provision of a working area and construction site related to Works No. 7a, 9 and 10
	02115	Provision of a working area and construction site related to Works No. 7a, 9 and 10
	05010	Provision of a working area and construction site related to Works No. 1a, 5a and 6a
	05020	Provision of a working area and construction site related to Works No. 1a, 5a and 6a
	01060	Provision of a working area and construction site related to Works No. 1a and 5a; and dredging works under article 17 and paragraph 93 of Schedule 8
	05011	Provision of a working area and construction site related to Works No. 1a and 5a; and dredging works under article 17 and paragraph 93 of Schedule 8
	05015	Provision of a working area and construction site related to Works No. 1a, 5a

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of plot of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
		and 6a; and dredging works under article 17 and paragraph 93 of Schedule 8
	08005	Provision of a working area and construction site related to Works No. 1a, 5a and 6a; and dredging works under article 17 and paragraph 93 of Schedule 8
	09005	Provision of a working area and construction site related to Works No. 1a, 5a and 6a; and dredging works under article 17 and paragraph 93 of Schedule 8
	12005	Provision of a working area and construction site related to Works No. 1a, 2a, 2b, 2c and 2d; and dredging works under article 17 and paragraph 93 of Schedule 8
	15005	Provision of a working area and construction site related to Works No. 1a, 2a, 2b, 2c and 2d; and dredging works under article 17 and paragraph 93 of Schedule 8
	14015	Provision of a working area and construction site related to Works No. 1b and 3
	16010	Provision of a working area and construction site related to Works No. 1b and 3
	16005B	Provision of a working area and construction site related to Works No. 1b and 3
	17010	Provision of a working area and construction site related to Works No. 1b and 3
Neath Port Talbot County Borough	02036	Provision of Work No. 7g
	02041	Provision of Work No. 7g
	02042	Provision of Work No. 7g; and provision of a working area related to Works No. 1b and 10
	03027	Provision of a working area and construction site for Works No. 1b and 10
	14010	Provision of a working area and construction site related to Work No. 1b
	07006	Provision of a working area and construction site related to Works No. 1b

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of plot of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
		and 4; and dredging under article 17 and paragraph 23 of Schedule 8
	07010	Provision of a working area and construction site related to Works No. 1b and 4; and dredging under article 17 and paragraph 23 of Schedule 8
	07015	Provision of Work No. 4; dredging; and provision of a working area and construction site related to Works No. 1b and 4
	10020	Provision of Work No. 4; dredging; and provision of a working area and construction site related to Works No. 1b and 4
	11006	Provision of a working area and construction site related to Works No. 1b and 4; and dredging under article 17 and paragraph 23 of Schedule 8
	11010	Provision of Work No. 4; dredging under article 17 and paragraph 23 of Schedule 8; and provision of a working area and construction site related to Works No. 1b and 4
	11015	Provision of Work No. 4; dredging under article 17 and paragraph 23 of Schedule 8; and provision of a working area and construction site related to Works No. 1b and 4

## SCHEDULE 7

Article 49

## Documents to be certified

The land plans listed below—

<i>(1)</i> <i>Application Document No.</i>	<i>(2)</i> <i>Drawing No.</i>	<i>(3)</i> <i>Drawing Description</i>
2.1.1b	2.1.1b	Key plan
2.1.2b	2.1.2b	Key plan Crown land
2.1.3c	2.1.3c	Sheet 1
2.1.4b	2.1.4b	Sheet 2
2.1.5b	2.1.5b	Sheet 3
2.1.6b	2.1.6b	Sheet 4

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<i>(1)</i> <i>Application Document No.</i>	<i>(2)</i> <i>Drawing No.</i>	<i>(3)</i> <i>Drawing Description</i>
2.1.7b	2.1.7b	Sheet 5
2.1.8b	2.1.8b	Sheet 6
2.1.9b	2.1.9b	Sheet 7
2.1.10b	2.1.10b	Sheet 8
2.1.11b	2.1.11b	Sheet 90
2.1.12b	2.1.12b	Sheet 10
2.1.13b	2.1.13b	Sheet 11
2.1.14b	2.1.14b	Sheet 12
2.1.15b	2.1.15b	Sheet 13
2.1.16b	2.1.16b	Sheet 14
2.1.17b	2.1.17b	Sheet 15
2.1.18b	2.1.18b	Sheet 16
2.1.19b	2.1.19b	Sheet 17
2.1.20b	2.1.20b	Sheet 18

the works plans listed below—

<i>(1)</i> <i>Application Document No.</i>	<i>(2)</i> <i>Drawing No.</i>	<i>(3)</i> <i>Drawing Description</i>
2.2.1		Works key plan
2.2.2B	3513/order/102.1D	Works plan - Sheet 1
2.2.3B	3513/order/102.2D	Works plan - Sheet 2
2.2.4B	3513/order/102.3D	Works plan - Sheet 3
2.2.5B	3513/order/102.4D	Works plan - Sheet 4
2.2.6B	3513/order/102.5D	Works plan - Sheet 5
2.2.7B	3513/order/102.6D	Works plan - Sheet 6
2.2.8B	3513/order/102.7D	Works plan - Sheet 7
2.2.9B	3513/order/102.8D	Works plan - Sheet 8
2.2.10B	3513/order/102.9D	Works plan - Sheet 9
2.2.11A	5118483-ATK-02-ZZ-DR-C-1201A	Marine Works Seawalls Sections - Sheet 1
2.2.12A	5118483-ATK-02-ZZ-DR-C-1202A	Marine Works Seawalls Sections - Sheet 2
2.2.13A	5118483-ATK-02-ZZ-DR-C-1203A	Marine Works Seawalls Sections - Sheet 3
2.2.14A	5118483-ATK-02-ZZ-DR-C-1204A	Marine Works Seawalls Sections - Sheet 4

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<i>(1)</i> <i>Application Document No.</i>	<i>(2)</i> <i>Drawing No.</i>	<i>(3)</i> <i>Drawing Description</i>
2.2.15A	5118483-ATK-02-ZZ-DR-C-1205A	Marine Works Seawalls Sections - Sheet 5
2.2.16A	5118483-ATK-02-ZZ-DR-C-1206A	Marine Works Typical Sections

the access and public rights of way plans listed below—

<i>(1)</i> <i>Application Document No.</i>	<i>(2)</i> <i>Drawing No.</i>	<i>(3)</i> <i>Drawing Description</i>
2.2.17A	3513/Order/201A	Access & Public Rights of Way key plan
2.2.18	3513/Order/20.21	Access & Public Rights of Way - Sheet 1
2.2.19A	3513/Order/202.2A	Access & Public Rights of Way - Sheet 2
2.2.20A	3513/Order/202.3A	Access & Public Rights of Way - Sheet 3
2.2.21	3513/Order/202.4	Access & Public Rights of Way - Sheet 4
2.2.22	3513/Order/202.5	Access & Public Rights of Way - Sheet 5
2.2.23	3513/Order/202.6	Access & Public Rights of Way - Sheet 6
2.2.24	3513/Order/202.7	Access & Public Rights of Way - Sheet 7
2.2.25	3513/Order/202.8	Access & Public Rights of Way - Sheet 8
2.2.26	3513/Order/202.9	Access & Public Rights of Way - Sheet 9
2.2.27	3513/Order/202.10	Access & Public Rights of Way - Sheet 10
2.2.28	3513/Order/202.11	Access & Public Rights of Way - Sheet 11

the Book of Reference dated 25th November 2014 (“Version 1.7”);  
the Environmental Statement which accompanied the application to the Secretary of State for an order granting development consent;  
the Design and Access Statement of February 2014 (“Document 8.1”);  
the Demolition Plan; bearing reference 3513/Order/401, 402.1, 402.2 and 402.3  
drawing TLP - SWANSEA BAY - 141003 - VO.2 referred to in Requirement 19 (Piling);  
ERA report 2015 - 0265 as referred to in Requirement 15 (Electrical Grid Connection Works);  
Land Contamination: A Guide for Developers (WLGA, WAG & EAW, 2012) as referred to in Requirement 12 (contamination and groundwater);  
the Operational Phase Traffic Management Plan submitted with the application;  
the outline Construction Environmental Management Plan dated 25th November 2014;  
the outline Operational Environmental Management Plan dated 4th November 2014;  
the outline Adaptive Environmental Management Plan dated 25th November 2014;  
the agreement pursuant to section 106 of the Town and Country Planning Act 1990 (a “section 106 agreement”) between The City and Country of Swansea Council, Neath Port Talbot County Borough Council, AB Ports and the undertaker of 8th December 2014; and  
the drawings listed below, which comprise the planning drawings, and includes works sections—

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<i>(1)</i> <i>Application Document No.</i>	<i>(2)</i> <i>Drawing No.</i>	<i>(3)</i> <i>Drawing Description</i>
2.4.1A	3513_PL_001A	Masterplan Key Plan
2.4.2	3513_PL_002.1	Masterplan Detail Scale - Sheet 1 of 6
2.4.3	3513_PL_002.2	Masterplan Detail Scale - Sheet 2 of 6
2.4.4	3513_PL_002.3	Masterplan Detail Scale - Sheet 3 of 6
2.4.5	3513_PL_002.4	Masterplan Detail Scale - Sheet 4 of 6
2.4.6	3513_PL_002.5	Masterplan Detail Scale - Sheet 5 of 6
2.4.7	3513_PL_002.6	Masterplan Detail Scale - Sheet 6 of 6
2.4.19	3513_PL_112	Typical Lagoon Wall Treatment Plan and Section
2.4.21	3513_PL_114	Halfway Point Plan and Section
2.4.23	5118483-ATK-02-ZZ-DR-C-1207	Marine Works Lagoon Water Shuttle
2.4.24	5118483-ATK-02-ZZ-DR-C-1110	Marine Works Turbine Housing and Sluices General Arrangement
2.4.25A	TLSB-ATK-02-XX-DR-C-2000A	Marine Works 7m Turbine House Typical Section
2.4.26A	5118483-ATK-02-ZZ-DR-C-1209A	Marine Works Sluice House Typical Section
2.4.27A	5118483-ATK-02-ZZ-DR-C-1213A	Marine Works Turbine and Sluice Gate Housing Elevation
2.4.28	5118483-ATK-00-ZZ-DR-C-1301	HV Cable Route and Utilities - Sheet 1 of 8
2.4.29	5118483-ATK-00-ZZ-DR-C-1302	HV Cable Route and Utilities - Sheet 2 of 8
2.4.30	5118483-ATK-00-ZZ-DR-C-1303	HV Cable Route and Utilities - Sheet 3 of 8
2.4.31	5118483-ATK-00-ZZ-DR-C-1304	HV Cable Route and Utilities - Sheet 4 of 8
2.4.32	5118483-ATK-00-ZZ-DR-C-1305	HV Cable Route and Utilities - Sheet 5 of 8
2.4.33	5118483-ATK-00-ZZ-DR-C-1306	HV Cable Route and Utilities - Sheet 6 of 8
2.4.34	5118483-ATK-00-ZZ-DR-C-1307	HV Cable Route and Utilities - Sheet 7 of 8
2.4.35	5118483-ATK-00-ZZ-DR-C-1308	HV Cable Route and Utilities - Sheet 8 of 8
2.4.36	5118483-ATK-02-ZZ-DR-C-1210	HV Cable Route Typical Details
2.4.37	5118483-ATK-HW00-ZZ-DR-D-1401	Improvement Works to Existing Highway Fabian Way Junction 3 - General Arrangement
2.4.38	5118483-ATK-HW00-ZZ-DR-D-1402	TLP Access Road and Construction Access Road - General Arrangement
2.4.39	5118483-ATK-HW00-ZZ-DR-D-1406	ABP Junction Arrangement - General Arrangement

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(1) Application Document No.	(2) Drawing No.	(3) Drawing Description
2.4.40A	5118483-ATK-00-ZZ-DR-C-1111A	Marine Works Dredging General Arrangement
2.4.41	3513/Order/401	Demolition (s) Key Plan
2.4.42	3513/Order/402.1	Demolition (s) Plan - Sheet 1 of 3
2.4.43	3513/Order/402.2	Demolition (s) Plan - Sheet 2 of 3
2.4.44	3513/Order/402.3	Demolition (s) Plan - Sheet 3 of 3
2.4.58	1259_C1002_A	Proposed Drawings: Burrows Information Centre

## SCHEDULE 8

Article 52

## PART 1

## For the protection of Associated British Ports

**Interpretation****1. In this Part—**

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation at or in the approaches to the harbours;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, or the carrying out of an operation, and “construct” and “constructed” are to be construed accordingly;

“erosion” means any erosion of the bed or banks of the sea or of any jetty or other structure of whatever nature within the harbours or the approaches to the harbours;

“the harbours” means the ports of Swansea and Port Talbot;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements and hydraulic information;

“port land” means any land held by AB Ports for the purpose of its statutory undertaking;

“specified work” means any tidal work and any work or operation authorised by this Order on port land or which may affect port land or navigation in respect of the harbours or the functions of AB Ports in relation to the operation of the harbours; and

“tidal work” includes dredging authorised by this Order or any marine licence granted under Part 4 of the 2009 Act relating to the authorised development.



## **General**

2. For the protection of AB Ports in relation to the harbours the following provisions have effect unless otherwise agreed in writing between the undertaker and AB Ports.

### **Acquisition or use of port land**

3.—(1) The undertaker must not under the powers conferred by this Order acquire or use, or acquire new rights over, port land without the consent of AB Ports.

(2) The undertaker must not exercise powers conferred by article 15 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any port land without the consent of AB Ports.

(3) Article 25 (power to override easements and other rights) does not apply to any rights held by AB Ports for the purpose of its statutory undertaking, except with the consent of AB Ports.

(4) The consent of AB Ports under this paragraph must not be unreasonably withheld but may be given subject to reasonable conditions.

### **Approval of plans and arrangements**

4.—(1) Before commencing the construction of any specified work, the undertaker must furnish to AB Ports plans of that work for its approval.

(2) Before decommissioning the generating station comprised in the authorised development the undertaker must furnish to AB Ports for its approval proposed arrangements for the removal or retention of the authorised development and for making it safe and managing it after it has ceased to be used for the generation of electricity.

(3) Any approval of AB Ports under this paragraph—

- (a) must not be unreasonably withheld;
- (b) may be given subject to such reasonable requirements as AB Ports may make for the protection of the harbours and navigation within the harbours and the approaches to the harbours, including a requirement for the undertaker to carry out protective works at its own expense;
- (c) may not vary the operation of this Order.

(4) The undertaker must—

- (a) carry out any specified work and any protective works required under sub-paragraph (3) in accordance with the plans approved under sub-paragraph (1) or settled under article 50 (arbitration); and
- (b) comply with any arrangements approved under sub-paragraph (2) or settled under article 50 (arbitration).

(5) If AB Ports fails to express its disapproval of any plans or arrangements within 56 days after they have been delivered to it under sub-paragraph (1) or (2), it is deemed to have approved them.

(6) Nothing in this paragraph affects the operation of article 42 (application of Energy Act 2004 in relation to decommissioning) or a decommissioning programme approved under that article.

### **Notice of works**

5. The undertaker must give to AB Ports not less than 56 days' written notice of its intention to commence the construction of a specified work and, not more than 14 days after completion of such construction, must give to AB Ports written notice of such completion.

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### **Inspection**

6. The undertaker must at all reasonable times during construction of a specified work and thereafter allow AB Ports, its servants and agents, access to such work and all reasonable facilities for inspection of any such work subject always to the reasonable stipulations of the undertaker relating to health, safety, security and confidentiality.

### **Temporary works**

7.—(1) After the purpose of any temporary works has been accomplished the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from AB Ports requiring the undertaker so to do, remove any such temporary works or any materials relating to them which may have been placed on port land or below the level of high water within the harbours or the approaches to the harbours by or on behalf of the undertaker.

(2) If the undertaker fails to do so within a reasonable period after receiving such notice, AB Ports may remove the same and may recover the reasonable costs of doing so from the undertaker.

### **Erosion or accumulation**

8.—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion the undertaker, if so requested by AB Ports acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction and, if it refuses or fails to do so, AB Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

(a) in the case of an accumulation, the remedy shall be its removal; and

(b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as AB Ports reasonably requires.

(3) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 12(1)(b) establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction.

(4) Nothing in this paragraph removes the need for a marine licence under Part 4 of the 2009 Act.

### **Lighting, etc.**

9. The undertaker shall pay to AB Ports the reasonable costs of such alterations to the marking and lighting of the harbours and the approaches to the harbours as may be necessary in consequence of the construction of a tidal work.

### **Abandoned or decayed works**

10.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order is abandoned or falls into decay, insofar as it affects or otherwise impacts upon the operation of the harbours or navigation in the approaches to the harbours, AB Ports may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as AB Ports reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation, AB Ports may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the undertaker so elects, to remove the tidal work and (to such extent as AB Ports reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, AB Ports may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(4) This provision shall not apply where any work is being managed and operated in accordance with any approval given by AB Ports.

(5) In the event of a difference or dispute between the undertaker and AB Ports as to the necessity of any steps or works specified in a notice by AB Ports under this paragraph, such difference or dispute shall be determined by arbitration in accordance with article 50 (arbitration).

(6) Nothing in this paragraph affects the operation of article 42 (application of Energy Act 2004 in relation to decommissioning), or a decommissioning programme approved under that article.

## **Byelaws**

**11.** The undertaker must consult AB Ports not less than 42 days before making any byelaw under article 47 (byelaws) and shall not make any byelaw which in the reasonable opinion of AB Ports conflicts with any byelaws made by AB Ports or with any powers exercisable by AB Ports or a harbour master of AB Ports for the regulation of navigation at the harbours or the approaches to the harbours.

## **Indemnity**

**12.—(1)** Without limiting the other provisions of this Part, the undertaker is to be responsible for, and make good to AB Ports, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to AB Ports by reason of or arising from or in connection with—

- (a) the perusal of plans and navigation schemes and the inspection of a specified work by AB Ports or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within the harbours and the approaches to the harbours—
  - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the River Tawe as AB Ports has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 8; and
  - (ii) where AB Ports has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any such accumulation or erosion;
- (c) the construction or failure of a specified work, or the undertaking by AB Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of AB Ports arising from such construction or failure including—
  - (i) any additional costs of dredging incurred by AB Ports as a result of contamination of the seabed caused by the construction of the specified work; and
  - (ii) any damage to the lock gates or damage from flooding caused by increased wave reflection as a result of the construction of the specified work;
- (d) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of a specified work.

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(2) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify AB Ports from and against all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of AB Ports or of any person in its employ or of its contractors or agents.

(4) AB Ports must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

**13.** The fact that any work or thing has been executed or done with the consent of AB Ports and in accordance with any conditions or restrictions prescribed by AB Ports or in accordance with any plans approved or deemed to be approved by AB Ports or to its satisfaction or in accordance with any directions or award of any arbitrator or in accordance with any plans approved by the Welsh Ministers and any conditions or restrictions imposed by them, does not relieve the undertaker from any liability under the provisions of this Part.

**14.** With the exception of any duty owed by AB Ports to the undertaker expressly provided for in the foregoing provisions of this Part, nothing in this Order is to be construed as imposing upon AB Ports, either directly or indirectly, any form of duty or liability to which AB Ports would not otherwise be subject which is enforceable by proceedings before any court.

### **Statutory functions**

**15.** Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, AB Ports at the commencement of this Order.

### **Arbitration**

**16.** Any difference or dispute arising under this Part shall, unless otherwise agreed in writing between the undertaker and AB Ports, be determined by arbitration in accordance with article 50 (arbitration).

## **PART 2**

### **For the protection of Neath Port Authority**

### **Interpretation**

**17.** In this Part—

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation at or in the approaches to the harbour including but not limited to accumulations against Work No. 1b;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, or the carrying out of an operation and “construct” and “constructed” are to be construed accordingly;

“erosion” means any erosion of the bed or banks of the sea or of any jetty or other structure of whatever nature within the harbour or the approaches to the harbour;

“the harbour” means the Port of Neath;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements, hydraulic and bathymetric survey information and risk assessment;

“specified work” means any tidal work and any work or operation authorised by the Order which is likely to affect navigation in respect of the harbour or the functions of Neath Port Authority in relation to the operation of the harbour; and

“tidal work” includes dredging authorised by this Order or any licence granted under Part 4 of the 2009 Act relating to the authorised development.

## **General**

**18.** For the protection of Neath Port Authority in relation to the harbour the following provisions have effect unless otherwise agreed in writing between the undertaker and Neath Port Authority.

### **Approval of plans and arrangements**

**19.**—(1) Before commencing the construction of any specified work the undertaker must furnish to Neath Port Authority plans of that work for its approval.

(2) Any approval of Neath Port Authority under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) may be given subject to such reasonable requirements as Neath Port Authority may make for the protection of the harbour and navigation within the harbour and the approaches to the harbour, including a requirement for the undertaker to carry out protective works at its own expense;

(c) may not vary the operation of this Order.

(3) The undertaker must carry out any specified work and any protective works required under sub-paragraph (2) in accordance with the plans approved under sub-paragraph (1) or settled under article 50 (arbitration).

(4) If Neath Port Authority fails to express its disapproval of any plans or arrangements within 56 days after they have been delivered to it under sub-paragraph (1), it will be deemed to have approved them.

### **Notice of works**

**20.** The undertaker must give to Neath Port Authority not less than 56 days’ written notice of its intention to commence the construction of the specified work and, not more than 14 days after completion of such construction, must give to Neath Port Authority written notice of such completion.

### **Inspection**

**21.** The undertaker must at all reasonable times during construction of a specified work and thereafter allow Neath Port Authority, its servants and agents, access to such work and all reasonable facilities for inspection of any such work subject always to the reasonable stipulations of the undertaker relating to health, safety, security and confidentiality.

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### **Temporary works**

**22.**—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Neath Port Authority requiring the undertaker so to do, remove any such temporary works or any materials relating to them which may have been placed below the level of high water within the harbour or the approaches to the harbour by or on behalf of the undertaker.

(2) If the undertaker fails to do so within a reasonable period after receiving such notice, Neath Port Authority may remove the same and may recover the reasonable costs of doing so from the undertaker.

### **Erosion or accumulation**

**23.**—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion within the harbour or approaches to the harbour that is likely to be detrimental to navigation, the undertaker, if so requested by Neath Port Authority acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction and, if it refuses or fails to do so, Neath Port Authority may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1)—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as Neath Port Authority reasonably requires.

(3) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 26(1)(b) establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction.

(4) Nothing in this paragraph removes the need for a marine licence under Part 4 of the 2009 Act.

### **Lighting, etc.**

**24.** The undertaker shall pay to Neath Port Authority the reasonable costs of such alterations to the marking and lighting of the harbour and the approaches to the harbour as may be necessary in consequence of the construction of a tidal work.

### **Abandoned or decayed works**

**25.**—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order is abandoned or falls into decay, insofar as it affects or otherwise impacts upon the operation of the harbour or navigation in the approaches to the harbours, Neath Port Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as Neath Port Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation, Neath Port Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the undertaker so elects, to remove the tidal work and (to such extent as Neath Port Authority reasonably requires) to restore the site to its former condition.

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(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, Neath Port Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(4) This provision shall not apply where any work is being managed and operated in accordance with any approval given by Neath Port Authority or by any programme approved by the Secretary of State to which article 42 (Application of Energy Act 2004 in relation to decommissioning) applies.

(5) In the event of a difference or dispute between the undertaker and Neath Port Authority as to the necessity of any steps or works specified in a notice by Neath Port Authority under this paragraph such difference or dispute shall be determined by arbitration in accordance with article 50 (arbitration).

(6) Nothing in this paragraph affects the operation of article 42 (Application of Energy Act 2004 in relation to decommissioning) or a decommissioning programme approved under that article.

### **Indemnity**

**26.**—(1) Without limiting to the other provisions of this Part, the undertaker is to be responsible for, and make good to Neath Port Authority, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to Neath Port Authority by reason of or arising from or in connection with—

- (a) the perusal of plans and navigation schemes and the inspection of the specified work by Neath Port Authority or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within the harbour and the approaches to the harbours—
  - (i) to establish the marine conditions prevailing prior to the construction of any tidal work in such area as Neath Port Authority has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 23; and
  - (ii) where Neath Port Authority has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any such accumulation or erosion;
- (c) the construction or failure of a specified work, or the undertaking by Neath Port Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of Neath Port Authority arising from such construction or failure;
- (d) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of a specified work.

(2) Without limiting the generality of sub-paragraph (1), the undertaker shall indemnify Neath Port Authority from and against all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of Neath Port Authority or of any person in its employ or its contractors or agents.

(4) Neath Port Authority must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph, and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

**27.** The fact that any work or thing has been executed or done with the consent of Neath Port Authority and in accordance with any conditions or restrictions prescribed by Neath Port Authority

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or in accordance with any plans approved or deemed to be approved by Neath Port Authority or to its satisfaction or in accordance with any directions or award of any arbitrator or and any conditions or restrictions imposed by the arbitrator, does not relieve the undertaker from any liability under the provisions of this Part.

**28.** With the exception of any duty owed by Neath Port Authority to the undertaker expressly provided for in the foregoing provisions of this Part, nothing in this Order is to be construed as imposing upon Neath Port Authority, either directly or indirectly, any form of duty or liability to which Neath Port Authority would not otherwise be subject which is enforceable by proceedings before any court.

### **Statutory functions**

**29.** Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, Neath Port Authority at the commencement of this Order.

### **Arbitration**

**30.** Any difference or dispute arising under this Part shall, unless otherwise agreed in writing between the undertaker and Neath Port Authority, be determined by arbitration in accordance with article 50 (arbitration).

## **PART 3**

### **For the protection of National Grid Electricity Transmission Plc**

#### **Application**

**31.** For the protection of the protected person, the following provisions shall, unless otherwise agreed in writing between the protected person and the persons concerned, have effect.

#### **Interpretation**

**32.** In this Part—

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

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

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works), and for the purposes of this Part includes the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule any works whatsoever which are near to or may affect apparatus of the protected person shall be included within that definition and for the avoidance of doubt this includes works for the diversion or laying of services and commencement shall be construed accordingly;

“functions” includes powers and duties;

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



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

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

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

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

“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

“protected person” means National Grid Electricity Transmission plc.

**33.** Except for paragraphs **34** (apparatus of protected persons in stopped up streets), **39** (retained apparatus: protection), **40** (expenses) and **41** (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of protected persons in stopped up streets**

**34.**—(1) Where any street is stopped up under article **10** (temporary stopping up of streets), the protected person whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected person legal easements reasonably satisfactory to the protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers in article **10** (temporary stopping up of streets), the protected person is at liberty at all times to take all necessary access across any such stopped up 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 was in that highway.

### **Protective works to buildings**

**35.**—(1) The undertaker, in the case of the powers conferred by article **14** (protective work to buildings), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the protected person or any interruption in the supply of electricity by the protected person is caused, the undertaker shall bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make compensation to the protected person for any loss sustained by it; and
- (b) indemnify the protected person against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the protected person, by reason of any such damage or interruption.

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(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the protected person or its contractors or workers; and the protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

**36.** This Order does not authorise the acquisition or extinguishment of land or rights in land or override any interest in land owned by the protected person that is or are required for the retention or maintenance of any retained apparatus except with the agreement of the protected person which shall not be unreasonably withheld.

### **Removal of apparatus**

**37.—(1)** If, in the exercise of the agreement reached in accordance with paragraph 36 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part and any right of the protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected person in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person 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 the protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected person to their satisfaction (taking into account paragraph 38(1)) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the protected person shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the protected person to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part shall be constructed in such manner and in such line or situation as may be agreed between the protected person and the undertaker.

(5) The protected person shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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) 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

easements rights agreements or licences granted, used, enjoyed or exercised by the protected person as of right or otherwise in relation to the apparatus then the provisions of this Part prevail.

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person 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 the protected person than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

**39.**—(1) Not less than 56 days before the commencement of any works authorised by 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 37(2) or otherwise, the undertaker shall submit to the protected person a plan and a ground monitoring scheme and seek from the protected person details of the underground extent of any electricity tower foundations.

(2) In relation to works which will or may be (i) situated on, over, under or within 15m measured in any direction of, any apparatus; or (ii) involve embankment works within 10m of any apparatus; or (iii) involve works within 10m of the outermost edge of any tower foundations, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation 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) intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues;
- (h) details of clearance to pylon foundations;
- (i) demonstration that pylon foundations will not be affected prior to, during and after construction; and
- (j) a written management plan for high voltage hazard during construction.

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

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

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

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

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

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

(8) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, 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.

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

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

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

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that the protected person retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 40.

## **Expenses**

**40.**—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to the protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, 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 this Schedule 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 the undertaker elects to use compulsory purchase

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powers to acquire any necessary rights under paragraph 37(3) all costs incurred as a result of such action;

- (b) 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 shall be deducted from any sum payable under sub-paragraph (1) 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 50 (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 protected person by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

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

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

## **Indemnity**

**41.**—(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 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

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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 purposes of those works) or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by the protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

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

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

(3) 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 neglect or default of the protected person, its officers, servants, contractors or agents.

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

### **Enactments and agreements**

42. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and the protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

43. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the protected person requires the removal of apparatus under paragraph 37(2) or the protected person makes requirements for the protection or alteration of apparatus under paragraph 39, the undertaker shall 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 the protected person's undertaking and the protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

### **Access**

44. If in consequence of the agreement reached in accordance with paragraph 36 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

45. Save for differences or disputes arising under paragraphs 37(2), 37(4), 38(1) and 39 any difference or dispute arising between the undertaker and the protected person under this Part shall,

unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 50 (arbitration).

## PART 4

### For the protection of Western Power Distribution (South Wales) Plc

#### Application

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

#### Interpretation

47. In this Part—

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

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

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works), and for the purposes of this Part includes the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule any works whatsoever which are near to or may affect apparatus of the protected person shall be included within that definition and for the avoidance of doubt this includes works for the diversion or laying of services and commencement shall be construed accordingly;

“functions” includes powers and duties;

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

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

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

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

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

“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

“protected person” means Western Power Distribution (South Wales) Plc.

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48. Except for paragraphs 49 (apparatus of protected persons in stopped up streets), 54 (retained apparatus: protection), 55 (expenses) and 56 (indemnity) this Part does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

#### **Apparatus of protected persons in stopped up streets**

49.—(1) Where any street is stopped up under article 10 (temporary stopping up of streets), the protected person whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected person legal easements reasonably satisfactory to the protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers in article 10 (temporary stopping up of streets), the protected person is at liberty at all times to take all necessary access across any such stopped up 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 was in that highway.

#### **Protective works to buildings**

50.—(1) The undertaker, in the case of the powers conferred by article 14 (protective work to buildings), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the protected person or any interruption in the supply of electricity by the protected person is caused, the undertaker shall bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make compensation to the protected person for any loss sustained by it; and
- (b) indemnify the protected person against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the protected person, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the protected person or its contractors or workers; and the protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

#### **Acquisition of land**

51. This Order does not authorise the acquisition or extinguishment of land or rights in land or override any interest in land owned by the protected person that is or are required for the retention or maintenance of any retained apparatus except with the agreement of the protected person which shall not be unreasonably withheld.

#### **Removal of apparatus**

52.—(1) If, in the exercise of the agreement reached in accordance with paragraph 51 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part and any right of the protected person to



maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected person in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person 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 the protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected person to their satisfaction (taking into account paragraph 53(1)) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the protected person shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the protected person to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part shall be constructed in such manner and in such line or situation as may be agreed between the protected person and the undertaker.

(5) The protected person shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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) 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 easements rights agreements or licences granted, used, enjoyed or exercised by the protected person as of right or otherwise in relation to the apparatus then the provisions of this Part prevail.

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person 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 the protected person than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation

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by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

**54.**—(1) Not less than 56 days before the commencement of any works authorised by 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 52(2) or otherwise, the undertaker shall submit to the protected person a plan and a ground monitoring scheme and seek from the protected person details of the underground extent of any electricity tower foundations.

(2) In relation to works which will or may be (i) situated on, over, under or within 15m measured in any direction of, any apparatus; or (ii) involve embankment works within 10m of any apparatus; or (iii) involve works within 10m of the outermost edge of any tower foundations, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation 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) intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues;

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

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

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

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

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

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

(8) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, 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.

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

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

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

### **Expenses**

**55.**—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to the protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, 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 this Schedule 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 the undertaker elects to use compulsory purchase powers to acquire any necessary rights under paragraph 52(3) all costs incurred as a result of such action;
- (b) 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 shall be deducted from any sum payable under sub-paragraph (1) 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 50 (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

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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 protected person by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

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

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

### **Indemnity**

**56.**—(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 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 purposes of those works) or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by the protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

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

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

(3) 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 neglect or default of the protected person, its officers, servants, contractors or agents.

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

### **Enactments and agreements**

57. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and the protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

58. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the protected person requires the removal of apparatus under paragraph 52(2) or the protected person makes requirements for the protection or alteration of apparatus under paragraph 54, the undertaker shall 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 the protected person's undertaking and the protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

### **Access**

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

### **Arbitration**

60. Save for differences or disputes arising under paragraphs 52(2), 52(4), 53(1) and 54 any difference or dispute arising between the undertaker and the protected person under this Part shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 50 (arbitration).

## **PART 5**

For the protection of SSE Energy Supply Limited,  
SWALEC and, Wales and West Utilities Limited

### **Application**

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

### **Interpretation**

62. In this Part—

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

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

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

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“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works), and for the purposes of this Part includes the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule any works whatsoever which are near to or may affect apparatus of the protected person shall be included within that definition and for the avoidance of doubt this includes works for the diversion or laying of services and commencement shall be construed accordingly;

“functions” includes powers and duties;

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

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

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

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

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

“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

“protected person” means any of SSE Energy Supply Limited, SWALEC and, Wales and West Utilities Limited; and

“undertaker” means the undertaker as defined in article 6 of this Order.

**63.** Except for paragraphs 64 (apparatus in stopped up streets), 68 (retained apparatus: protection), 69 (expenses) and 70 (indemnity) this Part does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of protected person in stopped up streets**

**64.** Notwithstanding the temporary stopping up or diversion of any street under the powers in article 10 (temporary stopping up of streets), the protected person is at liberty at all times to take all necessary access across any such stopped up 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 was in that street.

### **Protective works to buildings**

**65.—(1)** The undertaker, in the case of the powers conferred by article 14 (protective work to buildings), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably

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necessary in view of its intended removal or abandonment) or property of the protected person or any interruption in the supply of electricity, gas or water, as the case may be, by the protected person is caused, the undertaker shall bear and pay on demand the costs reasonably incurred by that protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make compensation to the protected person for any loss sustained by it; and
- (b) indemnify the protected person against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that protected person, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the protected person or its contractors or workers; and the protected person shall give to the undertaker reasonable notice of any claim or demand under sub-paragraph (1) and no settlement or compromise shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

### **Removal of apparatus**

**66.**—(1) If, in the exercise of an agreement reached in accordance with sub-paragraph (3) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus a protected person is placed, that apparatus shall not be removed under this Part and any right of the protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the undertaker in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person 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 the protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the undertaker to their satisfaction (taking into account paragraph 67(1)) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the protected person shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the protected person to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part shall be constructed in such manner and in such line or situation as may be agreed between the protected person and the undertaker.

(5) The protected person shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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.

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under (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 the protected person than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

68.—(1) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 66(2) or otherwise, the undertaker shall submit to the protected person a plan.

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

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

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

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

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

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

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with this sub-paragraph by the protected person for



the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

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

(8) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, 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.

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

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

(10) At all times when carrying out any works authorised under the Order comply with Wales & West Utilities policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of pipelines and associated installations operating above 2 BARs" and "General conditions to be observed for the protection of apparatus and the prevention of disruption to gas supplies" "HS(~G)47 Avoiding Danger from underground services".

## Expenses

**69.**—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to the protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, 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 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 the undertaker elects to use compulsory purchase powers to acquire any necessary rights under 66(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part.

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(2) There shall be deducted from any sum payable under sub-paragraph (1) 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 50 (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 protected person by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

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

## **Indemnity**

**70.**—(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 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 the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by the protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

(a) bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and

(b) indemnify that protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party as aforesaid.

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

(3) 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 neglect or default of the protected person, its officers, servants, contractors or agents.

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

(5) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land either owned by the protected person in respect of which the protected person has an easement or wayleave for their Apparatus or any other Interest or to carry out any works within 15m of the protected person's apparatus until the following conditions are satisfied—

(a) unless and until the protected person is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and the protected person has confirmed the same to the undertaker in writing; and

(b) unless and until the protected person are satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and protected person has confirmed the same in writing to the undertaker.

(6) In the event of the undertakers failure to comply with sub-paragraph (5) the protected person shall be entitled to seek injunctive relief (or any other equitable remedy) in any court of competent jurisdiction and the undertaker irrevocably and unconditionally waives any right of objection in relation to the protected person's right to seek injunctive relief or any other equitable remedy.

### **Enactments and agreements**

71. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and the protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

72. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the protected person requires the removal of apparatus under paragraph 66(2) or the protected person makes requirements for the protection or alteration of apparatus under paragraph 67, the undertaker shall 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 the protected person's undertaking and the protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

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### **Access**

73. If in consequence of the agreement reached in accordance with paragraph 66 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

74. Save for differences or disputes arising under paragraphs 66(2) and (4), 67(1) and 68 any difference or dispute arising between the undertaker and the protected person under this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 50 (arbitration).

## **PART 6**

For the protection of British Telecommunications Plc,  
Telefónica O2 UK Limited, and Virgin Media Limited

### **Application**

75. For the protection of communication operators, the following provisions of this Part shall, unless it is otherwise agreed in writing between the undertaker and the communication operator, have effect.

### **Interpretation**

76. In this Part—

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

“communication operators” means any of British Telecommunications plc, Telefónica O2 UK Limited and Virgin Media Limited; and

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003<sup>(30)</sup>.

### **Apparatus of public communications operator in stopped up streets**

77. The temporary stopping up or diversion of any street under article 10 (temporary stopping up of streets) does not affect any right of a public communications provider under paragraph 9 of the Telecommunications Code (the “Code”), contained in Schedule 2 to the Telecommunications Act 1984<sup>(31)</sup>, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

### **Indemnity**

78. If any of the communication operators suffers damage by reason or in consequence of the construction, use or failure of the authorised development or any subsidence resulting from those works, the undertaker shall pay any cost reasonably and properly incurred by the communication operator in making good such damage, and shall indemnify the communication operator against

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<sup>(30)</sup> 2003 c. 21.

<sup>(31)</sup> 1984 c. 12 as amended by Schedule 3 to the Communications Act 2003.

claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the communication operator by reason or in consequence of any such damage, but—

- (a) nothing in this paragraph imposes any liability on the undertaker with respect to any damage to the extent that such damage is attributable to any act or omission of the communication operator, its officers, servants, contractors or other agents; and
- (b) the communication operator shall give to the undertaker reasonable notice of any claim, demand or proceedings and shall make no settlement of any claim, demand or proceedings without the consent of the undertaker, such consent not to be unreasonably withheld.

## Code

79. Nothing in this Order affects any right of a public communications provider under the Code.

## PART 7

### For the protection of Dŵr Cymru Cyfyngedig

#### Application

80. For the protection of the protected person, the following provisions, unless otherwise agreed in writing between the undertaker and the protected person, have effect.

#### Interpretation

81. In this Part—

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

“apparatus” means all apparatus or accessories vested in or belonging to the protected person for the purpose of carrying on its statutory undertaking including the outfall;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

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

“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;

“outfall” means the existing long sea outfall pipeline from Swansea Bay Waste Water Treatment Works;

“outfall works” means Work No. 3 and such other works required for its provision under the powers of this Order;

“protected person” means Dŵr Cymru Cyfyngedig;

“specification” means the approved version of a draft specification considered by the protected person under paragraph 85 of this Part;

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“specified works” means the outfall works and any work forming part of the authorised development in any land purchased, held, or used pursuant to the Order that is—

- (a) within 3m either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;
- (b) within 6m either side of a public sewer or public water main where the public sewer or public water main is greater than 300mm in diameter;
- (c) within 9m either side of the centre line of a rising main; or
- (d) within 100m either side of the centre line of the outfall,

or which will or may in any way affect any apparatus together with all ancillary actions relating hereto; and

“sustainable drainage system” means any structure designed to receive rainwater and other surface water where such structure includes 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.

### **Consent not to be unreasonably withheld**

**82.** Where under any provision of this Part the consent or agreement of any person is required, such consent shall not be unreasonably withheld or delayed, may be given subject to reasonable conditions and may be given by the duly authorised representative of that person.

### **Water Industry Act 1991**

**83.** This Part does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 and Part 4 of the Water Industry Act 1991(32).

### **Written consent necessary**

**84.** Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or accessories or override or extinguish any easement or other interest of the protected person or acquire any land or other interest of the protected person or create any new rights over the same without the prior written consent of the protected person.

### **Protection of apparatus**

**85.—(1)** Without limiting the other provisions of this Part, before commencing the construction, replacement, renewal or removal of any specified work, and in the case of any specified work of a temporary nature its removal, the undertaker shall submit to the protected person a draft specification.

(2) For the purpose of the preparation of the draft specification and subject to such reasonable stipulations as it may require, the protected person shall as soon as reasonably practicable upon the undertaker’s reasonable request permit the undertaker to have reasonable access to such plans as it may have in its possession and to any of its land or apparatus.

(3) The protected person shall examine the draft specification submitted under sub-paragraph (1) and give its written consent or proposed amendments to the draft specification within 28 days from the date of receipt (and in the event of amendments, the process in this sub-paragraph shall be repeated where those amendments are not accepted) provided that where consent is neither given nor refused within 42 days of the submission of the draft specification (or such other time period agreed

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(32) 1991 c. 56.

by the undertaker and the protected person acting reasonably) consent thereto shall be deemed to have been given. The undertaker shall not commence the specified works until written or deemed consent is provided by the protected person in accordance with this sub-paragraph.

(4) The conditions which may be imposed under any consent and relating to a specification given by the protected person hereunder include conditions as to—

- (a) the commencement date and completion date of the specified works;
- (b) the reasonable removal, extension or alteration of apparatus necessitated by the specified works;
- (c) works for the protection of apparatus necessitated as a result of the specified works;
- (d) provision for access to any apparatus;
- (e) such works, provisions or methods as are reasonably necessary for the protection of the environment or the protection of the protected person from liability under the terms of any licence relating to its activities; and
- (f) an advance warning system providing for liaison between the undertaker and the protected person in respect of potential performance operational issues affecting, or damage to, apparatus arising from the specified works.

(5) The specified works shall be executed only—

- (a) in accordance with the specification;
- (b) exercising the standard of skill and care reasonably to be expected of a skilled and experienced professional person engaged in undertakings of a similar scope, nature and complexity as the specified works; and
- (c) in accordance with such reasonable conditions and requirements as may be imposed by the protected person,

and the protected person shall be entitled to watch and inspect the execution of the specified works.

(6) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time a draft specification to be implemented in substitution of the draft specification previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new draft specification, but the substituted draft specification shall not become the specification and may not be carried out without the consent or deemed consent of the protected person.

(7) The undertaker may not be required to comply with sub-paragraph (1) in a case of emergency provided it has complied with paragraph 88, save that the undertaker shall comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, after carrying out any specified works to which this sub-paragraph applies.

(8) The undertaker shall be responsible to the protected person for the reasonable expenses (including VAT) incurred by the protected person in, or in connection with, the inspection of the specified works or the apparatus, the protection of any apparatus or temporary works to be undertaken by the protected person (including in respect of examining the draft specification in accordance with sub-paragraph (3)).

(9) Where the protected person has apparatus that will be affected by the specified works (including the outfall), the undertaker shall determine the exact location of apparatus prior to any specified works being carried out by the undertaker.

(10) The undertaker shall not make any trial holes which interfere with any apparatus without the consent of the protected person.

(11) When works for the provision of any new, extended or altered apparatus or any protective work forming part of any such new, extended or altered apparatus, or existing apparatus, have been

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completed under this Part to the reasonable satisfaction of the protected person, they shall be vested in the protected person forthwith but shall be maintainable by the undertaker until a period of—

- (a) in the case of the outfall works, 24 months has elapsed and the protected person or an engineer appointed by the protected person has issued a certificate of final inspection of the new, altered or extended apparatus;
- (b) in the case of any other specified works which vest in the protected person in accordance with this paragraph, 12 months has elapsed and the protected person or an engineer appointed by the protected person has issued a certificate of final inspection of the new, altered or extended apparatus.

### **Outfall**

**86.** Save as may be authorised under paragraph 85, the undertaker shall not take any action or permit any action to be taken which is likely to endanger the structural integrity of the outfall.

### **Suspension of specified works**

**87.—(1)** The protected person is entitled to instruct the undertaker to suspend the specified works (or any part of the specified works) if in the protected person's reasonable opinion the actions of the undertaker, or those of its contractors or subcontractors in carrying out the specified works otherwise than in accordance with the specification or the provisions in this Part have caused damage to any apparatus or are likely to cause or result in damage to any apparatus or damage to the environment that was not foreseen at the time of the approval of the specification. In the event of such an instruction being given by the protected person—

- (a) the undertaker shall procure that it and its contractors and subcontractors shall as soon as reasonably practicable and forthwith in case of urgency suspend or cease the specified works in each case having due regard to health and safety factors and shall discuss and agree with the protected person such remedial actions (which may include works) as may be required prior to resuming the specified works and the person who shall be responsible for the performance of such remedial actions;
- (b) the undertaker and the protected person shall act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the specified works;
- (c) the protected person shall at such time as it issues any instruction under this paragraph submit to the undertaker immediately a written notice specifying the reasons for suspending the specified works;
- (d) in the event that the protected person fails to supply the written notice within 5 working days of the protected person's instruction to suspend, the instruction shall be void and the undertaker shall be entitled to recommence the specified works; and
- (e) where the protected person is responsible for any remedial action, it shall commence, carry out and complete such remedial actions pursuant to paragraph (a), as soon as reasonably practicable and the protected person shall give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker shall be entitled to resume the specified works.

(2) The protected person shall be entitled to reclaim all reasonable costs of all remedial actions attributable to any act or neglect of the undertaker in accordance with this paragraph.

### **Repair, maintenance and emergency works**

**88.—(1)** If in the reasonable opinion of the protected person repairs or maintenance works are necessary to apparatus within the Order limits, the undertaker shall as soon as reasonably practicable,



and (without prejudice to sub-paragraph (3)) in case of emergency forthwith, but subject always to such reasonable conditions as the undertaker may impose, permit access to the protected person for both personnel and equipment and allow the protected person (or its agent) to carry out such repairs or maintenance works.

(2) The undertaker is permitted to carry out emergency works provided that it first notifies the protected person of this immediately and in the event that the protected person suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the provision in paragraph 91 shall apply.

(3) The protected person shall at all times be permitted to carry out any emergency works in relation to its apparatus at the development site in accordance with Part 2 of Schedule 6 to the Water Industry Act 1991.

### **Entry on protected person's land**

**89.**—(1) Regardless of the other provisions of this Part, the undertaker shall not access any land comprised in site 02055 as shown on the land plans (plan 2 of 18) (“the waste water treatment works”) without providing 14 days’ prior written notice.

(2) The undertaker shall comply with the health and safety requirements specified by the protected person whilst present on the site of the waste water treatment works.

### **Expenses**

**90.**—(1) Subject to the following provisions of this paragraph, the undertaker is liable to make good, or, if the protected person so decides, to repay to the protected person the reasonable expenses and costs (including without limitation legal and professional fees) reasonably incurred by the protected person in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part (including any costs or compensation paid in connection with the acquisition of rights or land or the exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the inspection, superintendence and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the undertaker of any power under this Order;
- (d) the preparation and completion of any deeds of transfer where the apparatus is abandoned rather than removed; and
- (e) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any power under this Order,

within a reasonable time of being notified by the protected person that it has incurred such expenses.

(2) If in accordance with the provisions of this Part, 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 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 50 (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

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apart from this sub-paragraph would be payable to the protected person by virtue of paragraph 91(1) shall be reduced by the amount of that excess.

(3) For the purposes of paragraph 91(2) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

### **Damage to apparatus**

**91.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works referred to in this Part any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the protected person, or there is any interruption in any service provided by the protected person, the undertaker shall to the extent possible in law—

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

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

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

(3) The protected person shall give the undertaker reasonable notice of any claim or demand from any third party arising out of or in connection with the specified works, and no settlement or compromise shall be made without the consent of the undertaker.

### **Enactments**

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

## **PART 8**

### **For the protection of the City and County of Swansea Council**

#### **Accumulation and dredging in River Tawe**

**93.**—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction or presence there is caused or created an accumulation in that section of the River Tawe between the entrance to King's Dock and the Sail Bridge the undertaker, if so requested by the City and County of Swansea Council acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction or presence and, if it refuses or fails to do so, or if the City and County of Swansea Council so elects, that council may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1), in the case of any accumulation, the remedy shall be its removal.

(3) In the event that such accumulation would have been caused in any event by the factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation only to the extent that the same is attributable to such construction.

(4) Nothing in this paragraph removes the need for a marine licence under Part 4 of the 2009 Act.

**94.** Any difference arising between the undertaker and the City and County of Swansea Council other than a difference as to the meaning and construction of this Part shall be referred to and settled by arbitration under article 50 (arbitration) of this Order.

**95.** In this Part—

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works), and for the purposes of this Schedule includes the use and maintenance of the authorised development;

“tidal work” includes dredging authorised by this Order or any licence granted under Part 4 of the 2009 Act relating to the authorised development.

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## EXPLANATORY NOTE

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

This Order grants development consent for, and authorises Tidal Lagoon (Swansea Bay) plc to construct, operate and maintain, a tidal lagoon generating station in Swansea Bay together with all necessary development. For the purposes of the development consent, Tidal Lagoon (Swansea Bay) plc is authorised by the Order compulsorily or by agreement to purchase land and rights in land and to use land, as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance. The Order imposes Requirements in connection with the development for which it grants development consent.

A copy of the book of reference plans and other documents referred to in the Order, certified in accordance with article 49 of the Order (certification of plans, etc) may be inspected free of charge at the offices of the City and County of Swansea Council, Civic Centre, Oystermouth Road, Swansea SA1 3SN.