

2015 No. 1574

INFRASTRUCTURE PLANNING

The Hirwaun Generating Station Order 2015

Made - - - - - *23rd July 2015*

Coming into force - - - - - *14th August 2015*

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 114, 115 and 120 of the Planning Act 2008(b) (the “2008 Act”).

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications.

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

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- (a) S.I. 2009/2264 as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.
- (b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), see S.I. 2013/1124 for transitional provisions.
- (c) S.I. 2010/103, as amended by S.I. 2012/635.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Hirwaun Generating Station Order 2015 and comes into force on 14th August 2015.

Interpretation

2.—(1) In this Order—

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

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

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

“the 1984 Act” means the Road Traffic Regulation Act 1984(d);

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

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

“the 2008 Act” means the Planning Act 2008;

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

“apparatus”, unless otherwise provided for, has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means revision 3 of the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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- (a) 1961 c.33. There are amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991. Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991. Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006. There are other amendments to the 1965 Act which are not relevant to this Order.
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraph 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 65(5) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985; and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994. Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 1984 c.27.
- (e) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force in relation to England: 6th April 2012: S.I. 2012/601). There are other amendments to the 1990 Act which are not relevant to this Order.
- (f) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

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

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

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

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis;

“design principles statement” means the design principles statement contained within Appendix 2 of the design and access statement document with submission document reference number 10.2.0 submitted with the application and certified as the design principles statement by the Secretary of State for the purposes of this Order;

“ecological mitigation plan” means the ecological mitigation plan, revision 1.0, dated September 2014 and certified as such by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the environmental statement” means the environmental statement submitted with the application and updated as follows—

(a) Appendix 11.2 is superseded by the outline lighting strategy;

(b) Figure 8.5 is superseded by the ecological mitigation plan; and

(c) Appendix 4.1 is superseded by the outline construction environmental management plan;

and certified as such by the Secretary of State for the purposes of this Order;

“flood risk assessment” means the flood risk assessment with submission document reference number 5.2.0 submitted with the Order application and certified as the flood risk assessment by the Secretary of State for the purposes of this Order;

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

“gas turbine generator” means either one or two gas turbines which drive a single electricity generator for the purposes of generating electricity;

“gross rated electrical output” means the aggregate of the gross electric power as measured at the terminals of each generator comprised in the generating station in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010(a);

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

“Hirwaun Power Limited” means Hirwaun Power Limited (Company No. 8190283) whose registered office is at 33 Cavendish Square, London W1G 0PW;

“the land plans” means revision 3 of the plans identified with document reference number 2.2 certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means, in respect of numbered works 1 and 2 the outer limits of the corresponding numbered area shown on the works plans;

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

(a) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (S.I. 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (S.I. 2012/630), the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811).

“mitigation commitments register” means the document identifying mitigation commitments with document reference MCR submitted during the examination of the Order application and certified as the mitigation commitments register by the Secretary of State for the purposes of this Order;

“MWe” means megawatts of electrical output;

“National Grid” means National Grid Electricity Transmission plc. (Company No. 02366977) whose registered office is at 1-3 Strand, London, WC2N 5EH and/or National Grid Gas plc. (Company No. 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH as the context requires;

“operational phase” means the period of time that the relevant part of the authorised development is in operation after construction and “operation” should be construed accordingly;

“Order application” means the application made by the undertaker to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and Part 5 of the 2008 Act for this Order;

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

“the Order limits” means the limits shown on figure 1 of the works plans within which the authorised development may be carried out;

“outline construction environmental management plan” means the outline construction environmental management plan, revision 1.0, dated September 2014 and certified as such by the Secretary of State for the purposes of this Order;

“outline lighting strategy” means the outline lighting strategy, revision 1.0, dated September 2014 and certified as such by the Secretary of State for the purposes of this Order;

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

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Schedule 2 to this Order;

“rights of way, streets and access plan” means revision 3 of the plan identified with document reference number 2.7 certified as such by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any person within the meaning of section 127(8) of the 2008 Act;

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

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

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

“undertaker” means Hirwaun Power Limited;

“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; and

“the works plans” means revision 3 of the plans identified with document reference number 2.3 certified as such 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.

(a) 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).

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

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

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference to numbered work 2 means numbered works 2A – 2G (inclusive).

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

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2, the undertaker is granted development consent for the authorised development in Schedule 1 to be carried out within the Order limits.

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

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

Maintenance of authorised development

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

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

Operation of authorised development

5.—(1) The undertaker is hereby 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 or any obligation under any legislation that may be required to authorise the operation of a generating station.

Benefit of the Order

6. Subject to article 7 (consent to transfer benefit of the Order), the provisions of this Order will have effect solely for the benefit of Hirwaun Power Limited.

Consent to transfer benefit of the Order

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

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

except where paragraph (4) applies in which case no such consent is required.

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

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

(4) This paragraph applies where—

(a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989^(a) or section 7 of the Gas Act 1986^(b); or

(b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claims that have been made have all been compromised or withdrawn;

(iii) compensation has been paid in final settlement of all such claims;

(iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where paragraph (4) applies the undertaker must notify the Secretary of State in writing before transferring or granting any benefit referred to in paragraph (1).

PART 3 STREETS

Power to alter layout, etc., of streets

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

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

(a) alter the level or increase the width of any kerb, footway, cycle track or verge; and

(b) make and maintain passing place(s).

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

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

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of eight weeks beginning with the date on which the application was made, it is deemed to have granted consent.

(a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to the section that are not relevant to this Order.

(b) 1986 c.44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to the section that are not relevant to this Order.

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

Construction and maintenance of new or altered means of access

9.—(1) Those parts of each means of access specified in Part 1 of Schedule 4 to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 4 to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

Extinguishment of public rights of way

10.—(1) Subject to sub-paragraph (2), the undertaker may in connection with the carrying out of the authorised development stop up the section of the public right of way (being a footpath) shown marked by a pecked red line on the rights of way, streets and access plan and, with effect from the date that the aforementioned section of the public right of way is physically stopped up by the undertaker in connection with the carrying out of the authorised development, the public right of way over the aforementioned section will be extinguished.

(2) The undertaker must not stop up the public right of way described in sub-paragraph (1) unless and until it has constructed and made available for public use the alternative replacement section of the public right of way shown marked by a pecked blue line on the rights of way, streets and access plan and, with effect from the date of opening of such replacement section of public right of way to the public following completion of any works relating thereto, public rights of way of the same type, namely use as a footpath, over the replacement section will be deemed to be created.

Temporary prohibition or restriction of use of streets

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

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

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

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

(4) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of any street without the consent of the street authority which may attach reasonable conditions to any consent

(5) If a street authority fails to notify the undertaker of its decision within 8 weeks of receiving an application for consent under paragraph (4) that street authority is deemed to have granted consent.

(6) This article does not remove the requirement for the undertaker to obtain any order required under sections 1, 9 or 22BB of the 1984 Act.

Access to works

- 12.—**(1) The undertaker may, for the purposes of the authorised development—
- (a) form and lay out the permanent means of access, or improve existing means of access, in the location specified in Schedule 3 (streets subject to permanent alteration of layout); and
 - (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other temporary means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

- 13.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of the structure of any bridge or tunnel carrying a street;
 - (d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order; or
 - (e) the carrying out in the street of any of the works referred to in article 9 (construction and maintenance of new or altered means of access).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

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

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

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

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and by section 32 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed, see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) Except as authorised under this Order, the undertaker must not, in carrying out or maintaining works, damage or interfere with the bed or banks of any watercourse forming part of a main river.
- (6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) This article does not authorise the entry or discharge into controlled waters of any substance whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(a).
- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, a harbour authority within the meaning of section 57 of the Harbours Act 1964(b), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
 - (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

Authority to survey and investigate the land

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

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

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

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

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

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

- (a) 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.

(a) S.I. 2010/675. Regulation 12 was amended by S.I.s 2011/2043 and 2013/390. There are other amendments to these Regulations which are not relevant to this Order.

(b) 1964 c.40. There are amendments to section 57 that are not relevant to this Order.

(c) 1991 c.57.

(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^(a).

PART 5 POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to article 20 (Compulsory acquisition of rights etc.), article 23 (Acquisition of subsoil only) and article 26 (Temporary use of land for carrying out the authorised development).

(3) Nothing in this article authorises the acquisition of rights or other interests in land owned by the Crown.

Compulsory acquisition of land – incorporation of the mineral code

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

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

Statutory authority to override easements and other rights

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

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

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

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract, authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

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

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

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

(a) The functions of the Lands Tribunal under the 1961 Act are transferred to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 (c.15).

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc.

20.—(1) The undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans for the authorised development or to facilitate it or as incidental to it.

(2) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of Schedule 5 (modification of compensation and compulsory purchase enactments for creating new rights), where the undertaker acquires a right over land under paragraph (1), the undertaker is not to be required to acquire a greater interest in that land.

(3) Schedule 5 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

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

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

(6) Nothing in this article authorises the acquisition of rights or other interests in land owned by the Crown.

Private rights

21.—(1) Subject to the provisions of this article, all private rights 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)^(b),

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

(b) Section 11 was amended by section 34 of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67), section 3 of Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c.71) and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

whichever is the earliest.

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

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

whichever is the earliest.

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

(4) Subject to the provisions of this article, all private rights 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 and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers) or article 28 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights over land,
 - (ii) the undertaker's appropriation of it,
 - (iii) the undertaker's entry onto it, or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

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

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

(9) This article does not apply to—

- (a) any land or interest in land owned by—
 - (i) Rhondda Cynon Taf County Borough Council in plots 1_GR, 1a_GR, 1b_GR, 3_GR, 3a_GR, 3b_GR, 4_GR, 4a_GR, 4b_GR, 5_GR, 5a_GR, 8_GR, 8a_GR, 8b_GR, 9_GR, 9a_GR, 9b_GR, 1_ER, 2_ER, 3_ER and 4_ER;
 - (ii) Paul Jonathan Lloyd in plots 2_ER and 3_ER;
 - (iii) Hirwaun Estates Limited in plots 4_ER and 5_ER;
 - (iv) Skipton Building Society in plot 4_ER;
 - (v) J.D. Burford Limited in plot 5_ER;
 - (vi) Wendy Joseph in plot 5_ER;

- (vii) Philip Sedgemore in plot 5_ER;
 - (viii) Tip Top Toilets Limited in plot 5_ER;
 - (ix) Walter Energy Limited in plot 5_ER;
 - (x) Welsh Tyre Recycling in plot 5_ER; and
 - (xi) The Welsh Government in plots 1_MS, 2_MS, 3_MS, 4_MS, 5_MS, 6_MS, 7_MS and 4_ER,
- (b) any reference to a plot in this article is a reference to a plot of land identified on the land plans and referred to in the book of reference.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

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

(4) In section 3, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In section 3, for subsections (5) and (6) there is substituted—

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

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

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

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

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

(8) References to the 1965 Act in the 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.

(a) 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 section 56 and 321 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); paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and paragraph 7(2) of Schedule 19 to the Leasehold Reform, Housing and Urban Development Act 1993 (c.28), section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed under paragraph 40(4) of Schedule 10 to the Finance Act 1975 (c.7) and Schedule 9 to the Capital Transfer Tax Act 1984 (c.51). There are other amendments to the 1981 Act which are not relevant to this Order.

Acquisition of subsoil only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 16 (compulsory acquisition of land) and paragraph (1) of article 20 (compulsory acquisition of rights etc.) 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 to not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 24 (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

24.—(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 is to be required to 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 is to be, unless the undertaker agrees to take the land subject to the counter-notice, referred to the tribunal.

(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 is to be required to 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 to treat 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 to be 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 which 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 of 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

25.—(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) is not to apply in relation to—

(a) any subway or underground building; or

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

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

(5) Compensation is not to be 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 the authorised development

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

(a) enter on and take temporary possession of—

(i) 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 relating to the part of the authorised development specified in column (4) of that Schedule;

- (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the requisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);
 - (b) remove any buildings and vegetation from that land; and
 - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
 - (d) construct any works specified in relation to that land in column (3) of Schedule 6, or any other mitigation works identified in the environmental statement in relation to the authorised development or required pursuant to the requirements in Schedule 2.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land referred to in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
 - (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.
- (4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building removed under this article.
- (5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of 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, is to be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority)(a) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).
- (11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 6.

(a) Section 13 is amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

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

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

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

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

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

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

(11) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning.

Statutory undertakers

28. Subject to the provisions of Schedule 7 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish or suspend the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Recovery of costs of new connections

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

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

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

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

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

(4) In this paragraph—

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

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

Plots 1_ER-6_ER and plots 1_GR-11a_GR

30.—(1) This Part of the Order does not apply to plots 1_ER-6_ER (inclusive), unless the relevant planning authority has, in relation to all works comprising the underground electrical cable circuit from the authorised development to National Grid’s substation known as Rhigos Substation, and any related above ground works and all necessary infrastructure, either—

- (a) confirmed in writing after the day that this Order comes into force that the work is permitted development under the Town and Country Planning (General Permitted Development) Order 1995(b); or
- (b) granted planning permission under Part 3 of the 1990 Act for such works as not covered by sub-paragraph (a) above.

(2) This Part of the Order does not apply to plots 1_GR-11a_GR (inclusive) unless the relevant planning authority has granted planning permission under Part 3 of the 1990 Act for works comprising an underground gas pipeline from National Grid’s transmission system to the authorised development and an above ground installation and all necessary infrastructure for the purposes of supplying the authorised development with fuel.

(a) 2003 c.21.
(b) S.I. 1995/418.

PART 6 OPERATIONS

Felling or lopping of trees

31.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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

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

PART 7 MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

32.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
 - (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,
- so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

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

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

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

Cases in which land is to be treated as not being operational land

33. Development consent granted by this Order insofar as it relates to numbered work 2 described in Schedule 1 is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (Cases in which land is to be treated as not being operational land).

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

Protective provisions

35. Schedule 7 (protective provisions) has effect.

Certification of plans etc.

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

- (a) the book of reference;
- (b) the land plans;
- (c) the works plans;
- (d) the rights of way, streets and access plan;
- (e) the environmental statement;
- (f) the flood risk assessment;
- (g) the design principles statement;
- (h) the mitigation commitments register;
- (i) ecological mitigation plan;
- (j) outline construction environmental management plan;
- (k) outline lighting strategy,

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

(a) 1990 c.43. Section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c.40), section 106 of and Schedule 17 to the Environment Act 1995 (c.25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16). There are other amendments to this section which are not relevant to this Order.

(b) 1974 c.40. Sections 61 and 65 are amended by section 133 of, and Schedule 7 to, the Building Act 1984 (c.55), section 120 of, and Schedule 24 to, the Environment Act 1995 (c.25) and section 162 of, and Schedule 15 to, the Environmental Protection Act 1990 (c.43); there are other amendments not relevant to this Order.

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

Service of notices

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

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

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

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

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

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

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

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

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

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

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(a) 1978 c.30.

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

Procedure in relation to certain approvals etc.

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

(2) Save for applications made pursuant to Schedule 8, if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(3) Schedule 8 is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority.

(4) Where an application is made to or request is made of the consenting body as referred to in paragraph (1) of this article, such application must draw the consenting body's attention to the procedure set out in paragraph (2) of this article.

Arbitration

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

Guarantees in respect of payment of compensation

40.—(1) The undertaker must not begin to exercise the powers provided in Parts 3,4,5 or 6 of this Order in relation to any land unless it has first put in place either—

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

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

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

23rd July 2015

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

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County Borough of Rhondda Cynon Taf—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act consisting of a generating station with a gross rated electrical output of up to 299MWe comprising—

Numbered work 1 development comprising the demolition of all existing buildings and structures, including foundations, hardstanding and services,

Numbered work 2A development comprising—

- (a) up to 5 gas turbine generators; and
- (b) up to 5 exhaust gas emission flue stacks,

Numbered work 2B development comprising—

- (a) an administration building;
- (b) a store;
- (c) a control room/office/workshop;
- (d) telemetry apparatus;
- (e) black start diesel generator;
- (f) a natural gas receiving station and gas treatment compound containing—
 - (i) a pipeline inspection gauge (PIG) receiving facility;
 - (ii) isolation valves, metering, heating, filtering, compression, pressure regulation equipment;
 - (iii) electricity supply kiosk; and
 - (iv) control and instrumentation kiosks,

Numbered work 2C development comprising a switchyard / banking compound containing up to eight transformers, switchgear building and other plant required to manage the transmission of electricity,

Numbered work 2D development comprising a construction and maintenance compound including new hardstanding,

Numbered work 2E development comprising—

- (a) security infrastructure, including cameras, perimeter fencing and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns;
- (c) internal roadways, car parking, pedestrian network, cycle parking, hardstanding and water treatment trailers;
- (d) site drainage, attenuation pond and waste management infrastructure;
- (e) electricity, water, wastewater and telecommunications and other services;
- (f) a raw / fire water tank and demineralised water storage tank;
- (g) landscaping including tree planting, fencing and other boundary treatments and ecological mitigation (including bat mitigation structure);
- (h) tree and hedge removal;

- (i) high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;
- (j) underground gas pipeline connection, associated telemetry and cathodic protection test / transformer rectifier unit; and
- (k) other ancillary equipment,

Numbered work 2F development comprising new or modified permanent means of access to numbered work 2 including permanent road surface, drainage, gates and fencing,

Numbered work 2G development comprising the maintenance strengthening or re-laying in a new location of the existing culvert forming that part of ordinary watercourse River Camnant within the Order limits, such works subject to maintaining the existing flow rate.

SCHEDULE 2 REQUIREMENTS

Article 3

Interpretation

1. In this Part of Schedule 2 the following expression has the following meaning—
“AOD” means above ordnance datum.

Time limits

2. The authorised development must commence no later than the expiration of 5 years from the date this Order comes into force.

Numbered Works

3. Where these requirements refer to numbered work 2, such reference is to be taken to mean numbered works 2A – 2G (inclusive).

Detailed Design

- 4.—(1) The authorised development must be carried out in accordance with the approved plans in Table 1 below, inclusive of any limits of deviation, bearing the references listed below and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any requirement (as the same may be amended by approval of the relevant planning authority in accordance with requirement 18(1))—

Table 1

Works plans	Submission document reference number 2.3 Revision 3
Rights of way, streets and access plan	Submission document reference number 2.7 Revision 3

- (2) The authorised development must be carried out in accordance the parameters specified in Table 2 below (as the same may be amended by approval of the relevant planning authority pursuant to requirement 18(1))—

Table 2

<i>Building Structure or</i>	<i>Maximum height (metres above 211m AOD)</i>	<i>Minimum height (metres above 211m AOD)</i>	<i>Maximum length (metres)</i>	<i>Minimum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum width (metres)</i>
Each gas turbine generator (where one or two gas turbine generators are constructed) (Part of numbered work 2A)	19.0	–	30.0	–	30.0	–
Each gas turbine generator (where three, four or five gas turbine generators are constructed) (part of numbered work 2A)	10.0	–	36.0	–	23.0	–
Each exhaust gas emission flue stack (part of numbered work 2A)	35.0	30.0	–	–	10.0	–
Control room/office/workshop (part of numbered work 2B)	6.0	–	29.0	–	23.0	–
Natural gas receiving station and gas treatment compound (part of numbered work 2B)	3.0		50.0	–	46.0	–
Black start diesel generator (part of numbered work 2B)	5.0	–	13.0	–	5.0	–
Switchyard / banking compound (numbered work 2C)	11.3	–	60	–	60	–

<i>Building or Structure</i>	<i>Maximum height (metres above 211m AOD)</i>	<i>Minimum height (metres above 211m AOD)</i>	<i>Maximum length (metres)</i>	<i>Minimum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum width (metres)</i>
Switchgear Building (part of numbered work 2C)	11.3	–	21.0	–	15.0	–
Gatehouse (part of numbered work 2E)	4.5	–	9.0	–	8.0	–
Demineralised water tank (part of numbered work 2E)	16.0	–	23.0	–	23.0	–
Raw/fire water tank (part of numbered work 2E)	18.0	–	15.0	–	15.0	–
Bat mitigation structure (part of numbered work 2E)	6.0	–	10.0	–	5.0	–

(3) Numbered work 2 of the authorised development is not to commence until details of the layout, scale and external appearance of numbered work 2 have been submitted to and approved by the relevant planning authority in consultation with the Brecon Beacons National Park Authority.

(4) Paragraph (3) is not to apply to any new permanent or temporary means of access to a highway forming part of numbered work 2 which has been approved pursuant to requirement 4.

(5) To the extent that design principles for any numbered work are set out in the design principles statement, that numbered work must be designed substantially in accordance with the relevant design principle set out therein.

(6) The authorised development must be carried out substantially in accordance with the mitigation measures identified in the mitigation commitments register in so far as they relate to the authorised development.

Provision of landscaping

5.—(1) Numbered work 2 of the authorised development is not to commence until a written landscaping plan for numbered work 2 has been submitted to and approved by the relevant planning authority. The landscaping plan must include details of all proposed hard and soft landscaping works and be substantially in accordance with the landscaping mitigation proposals set out in figure 11.5 of the environmental statement in so far as they relate to numbered work 2, and include details of—

- (a) location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;

- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units and signs;
- (g) existing trees to be retained, with measures for their protection together with any landscaping and visual mitigation required during the construction period;
- (h) implementation timetables for all landscaping works;
- (i) measures for the management of the ecological resources that will remain within the Order land on completion of the authorised development; and
- (j) landscaping maintenance throughout the operational life of the authorised development.

(2) All landscaping works must be carried out in accordance with the landscaping plan approved under this requirement 5 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) The landscaping works must be carried out in accordance with implementation timetables approved in the landscaping plan under this requirement 5.

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

Highway accesses

6.—(1) Numbered work 2 of the authorised development is not to commence until for numbered work 2, written details of the design, layout and (where not already identified in Schedule 3 and the rights of way, streets and access plan) siting of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has been submitted to and approved by the relevant planning authority (in consultation with the highway authority).

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

Fencing and other means of enclosure

7.—(1) Numbered work 2 of the authorised development is not to commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure for numbered work 2 have been submitted to and approved by the relevant planning authority.

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

(3) Any temporary fencing must be removed within three months of the completion of the authorised development.

(4) The details approved pursuant to this requirement must be implemented.

(5) Any permanent gates comprised in numbered work 2 are to be set back a minimum of 10 metres from the nearside edge of the carriageway.

Surface and foul water drainage

8.—(1) Numbered work 2 of the authorised development is not to commence until, for numbered work 2, written details of a surface and foul water drainage plan (including means of pollution control) have, after consultation with the relevant sewerage and drainage authority, been submitted to and approved by the relevant planning authority, such strategy to be in substantial accordance with the principles set out in Section 5.2 of the flood risk assessment.

(2) The surface and foul water drainage plan must be implemented in accordance with the approved details.

Contaminated land and groundwater

9.—(1) Numbered work 2 of the authorised development is not to commence until a written scheme applicable to that numbered work, to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons, the environment or significant pollution of controlled waters has, after consultation with Natural Resources Wales been submitted to and approved by the relevant planning authority.

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

(3) Remediation must be carried out in accordance with the approved scheme.

Ecological management plan

10.—(1) Each of numbered works 1 and 2 of the authorised development is not to commence until a written ecological management plan covering that numbered work reflecting a pre-construction ecological constraints survey and the ecological mitigation and enhancement measures identified in the ecological mitigation plan for that numbered work, figure 11.5 and section 8.7 of the environmental statement has been submitted to and approved by the relevant planning authority in consultation with Natural Resources Wales.

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

Archaeology

11.—(1) Each of numbered works 1 and 2 of the authorised development is not to commence until a written scheme of investigation covering that numbered work has been submitted to and approved by the relevant planning authority.

(2) The written scheme of investigation is to be a technical document that outlines the aim and objectives and methods to be employed during a scheme of archaeological investigation work.

(3) The scheme must identify areas where field work or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

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

(5) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Construction environment management plan

12.—(1) No numbered work of the authorised development is to commence until a construction environment management plan covering that numbered work has been submitted to and approved by the relevant planning authority. The construction environment management plan in so far as it relates to the relevant numbered work must be in accordance with the outline construction environmental management plan and must include the following during demolition and construction—

- (a) complaints procedures;
- (b) nuisance management including measures to avoid or minimise the impacts of construction works (covering noise and vibration);
- (c) a dust management plan;
- (d) a site waste management plan;
- (e) surface and ground water protection measures;

- (f) security measures; and
- (g) demolition method statement (in relation to numbered work 1 only).

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

Construction traffic

13.—(1) No numbered work of the authorised development other than tree felling is to commence until a construction traffic management plan covering that numbered work has been submitted to and approved by the relevant planning authority in consultation with Welsh Government Transport. The construction traffic management plan is to detail the proposals for the movement of construction traffic and abnormal indivisible loads associated with the authorised development and is to include—

- (a) construction vehicle routing plans at 1:2,500 scale for all traffic including abnormal indivisible loads showing—
 - (i) swept path analysis from the point of entry onto the highway network to the Order land;
 - (ii) highway mitigation in respect of any identified constraints on vehicle movements such as embargo periods, route traffic sensitivity, temporary road works and other highway restrictions to be developed following consultation with the South Wales Trunk Road Agent, and, where relevant, referring to supporting HD19/03 safety audit documentation (as contained within the Design Manual for Roads and Bridges Volume 5 Section 2 Part 2 and as amended or replaced); and
 - (iii) land ownership boundaries for any required holding areas, passing areas and layover areas;
- (b) evidence of appropriate trial runs that demonstrate the suitability of the route from point of entry onto the trunk road network to the Order land for the proposed types of abnormal indivisible loads;
- (c) site access plans at 1:2,500 scale that include supporting HD19/03 safety audit documentation (as contained within the Design Manual for Roads and Bridges Volume 5 Section 2 Part 2 and as amended or replaced);
- (d) proposals for the management of junctions to and crossings of the public highway during delivery of abnormal indivisible loads;
- (e) proposals for the scheduling and timing of movements of delivery vehicles, to be developed following consultation with the Welsh Government and potentially affected undertakers, and, in relation to any abnormal indivisible loads, details of vehicle parameters, number of vehicles in convoy size, dimensions (width, length, height) and weight (total vehicle with load and axel loading);
- (f) details of escorts for abnormal indivisible loads highlighting where and when along the route private vehicles, banksman and Police vehicles escorts will be used (including emergency contingencies);
- (g) proposals for temporary warning signs and banksman for abnormal indivisible loads, including provision of plan drawings and associated traffic signs schedule highlighting locations along the route where temporary traffic management (including cones and temporary signs) needs to be deployed;
- (h) a methodology for undertaking a conditions survey of Main Avenue, Fourth Avenue and any other land identified during the trial runs that may have a constraining impact on the abnormal indivisible load movements including the timescales for undertaking the surveys and the method(s) of reporting the findings to the relevant planning authority, comprehensive photographs and potential compensation arrangements;
- (i) details of any temporary or permanent improvements to highways;

- (j) proposals for the making good of any incidental damage to highways by construction traffic associated with the authorised development including street furniture, structures, drainage features, highway verge and carriageway surfaces;
 - (k) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during any of the activities, operations or works set out in Schedule 4; and
 - (l) proposals for the notification of occupiers of land adjacent to the construction traffic route of the scheduling and timing of abnormal indivisible load movements from the point of exit from the trunk road network to the Order land.
- (2) The construction traffic management plan must be implemented as approved.
- (3) During the operation or decommissioning of numbered work 2 no abnormal indivisible loads must be transported into or out of the Order land without the prior written approval of the relevant planning authority in consultation with Welsh Government Transport.

Construction hours

- 14.**—(1) No construction work, or the delivery or removal of materials, is to take place outside the hours of—
- (a) 0700 and 1830 hours on weekdays (excluding public holidays); and
 - (b) 0700 and 1300 hours on Saturdays and public holidays.
- (2) Sub-paragraph (1) does not prevent outside such hours construction works, or the delivery or removal of materials, being carried out with the prior written approval of the relevant planning authority.

Control of noise during operational phase

15.—(1) Following the date of final commissioning of numbered work 2, site-attributable noise attributable to numbered work 2 during the operational phase must be limited at all times of day to the noise levels set out below in Table 3 measured at the coordinates set out below in Table 3—

Table 3

<i>Noise Limit Sound Pressure Level, L_{Aeq, 5mins} dB</i>	<i>Coordinates</i>	
	<i>X</i>	<i>Y</i>
52	293820.1	206257.2
52	293738.8	206173.6
53	293622.9	206319
54	293741.2	206353.3

- (2) Noise measurements at each of the identified locations must be undertaken in accordance with BS 7445. Measurements should be undertaken with the power plant running at base load. A single LAeq 5min measurement will be required at each identified location during the day, evening and night time periods identified as follows — daytime (0700hrs to 1900hrs), evening (1900hrs to 2300hrs) and night time (2300hrs to 0700hrs).
- (3) Records of the noise measurements referred to in paragraph (2) at each location referred to in paragraph (1) must be retained by the undertaker for twelve months and provided to the relevant planning authority or any other person within three working days of a request (although the undertaker is not be required to respond to more than one request per person per month).
- (4) Any complaint made to the undertaker in relation to a breach of paragraph (1) must be—
- (a) acknowledged by the undertaker within three working days of the date of the complaint;
 - (b) investigated within seven working days of the date of the acknowledgement referred to in sub-paragraph (a); and
 - (c) a response provided within seven working days of the date of completion of period for the investigation referred to in sub-paragraph (b).

(5) Any subsequent complaint by person from whom the undertaker has previously investigated a complaint under paragraph (4) must be referred by the undertaker to the relevant planning authority (although only one complaint per person per month must be referred).

Control of artificial light emissions

16.—(1) Numbered work 2 of the authorised development is not to commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of artificial light emissions for numbered work 2 which is in accordance with the outline lighting strategy in so far as it relates to the authorised development has been submitted to and approved by the relevant planning authority in consultation with the Brecon Beacons National Park Authority.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the operation of the relevant numbered work.

Decommissioning strategy

17.—(1) Subject to obtaining the necessary consents, unless otherwise agreed with the relevant planning authority, within twenty four months of the site ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis), a scheme for the demolition and removal of numbered work 2 must be submitted to the relevant planning authority.

(2) The demolition and removal of numbered work 2 must be implemented in accordance with the approved scheme.

Amendments to approved details

18.—(1) With respect to any plans, details, schemes or matters which require approval by the relevant planning authority pursuant to any other requirement (the “Plans, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Plans, Details or Schemes and following any such approval by the relevant planning authority the Plans, Details or Schemes are to be taken to include the amendments approved pursuant to this sub-paragraph (1).

(2) Approval under requirement sub-paragraph (1) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

Date of final commissioning and cessation

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

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

Provision of details to the Ministry of Defence

20. Numbered work 2 of the authorised development is not to commence until the following details for that numbered work have been provided to the Ministry of Defence Geographic Centre—

- (a) location of the authorised development;
- (b) proposed date of commencement;

- (c) anticipated date of final commissioning;
- (d) the height above ground of the tallest structure forming part of the authorised development; and
- (e) the maximum extension height of the tallest structure anticipated to be within the Order land during construction of the authorised development.

Operational Limits

21.—(1) In any calendar year the operation of the gas turbine generators comprised in numbered work 2A must not exceed 1500 hours in total.

(2) Within three months of the end of a calendar year, the undertaker must submit a written report to the relevant planning authority detailing the actual total number of hours of operation of the gas turbine generators comprised in numbered work 2A.

(3) For the purposes of this requirement, “operation of the gas turbine generators” means the duration in which any energy is exported at the settlement metering point, being the point at which a supply to the transmission system from the authorised development is measured.

SCHEDULE 3

Article 8

STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

Table 4

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of Rhondda Cynon Taf	Main Avenue	The lowering of the levels of the kerb between the points marked D and E on the rights of way, streets and access plan to provide a permanent access to numbered work 2.
In the District of Rhondda Cynon Taf	Main Avenue	The lowering of the levels of the kerb between the points marked F and G on the rights of way, streets and access plan to provide a permanent access north to numbered work 2.
In the District of Rhondda Cynon Taf	Main Avenue	The lowering of the levels of the kerb between the points marked F and G on the rights of way, streets and access plan to provide a permanent access south to numbered work 2.
In the District of Rhondda Cynon Taf	Fourth Avenue	The lowering of the levels of the kerb between the points marked I and J on the rights of way, streets and access plan to provide a permanent access to numbered work 2.
In the District of Rhondda Cynon Taf	Rhigos Road (north and south sides)	The lowering of the levels of the kerb between the points marked L and M on the rights of way, streets and access plan to provide a permanent access to numbered work 2.

SCHEDULE 4

Article 9

ACCESS

PART 1

THOSE PARTS OF ACCESSES TO BE MAINTAINED AT THE PUBLIC EXPENSE

Table 5

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Rhondda Cynon Taf	Main Avenue	Those parts of the modified accesses at Main Avenue providing permanent access to numbered work 2 and shown on the rights of way, streets and access plan hatched blue between points marked D and E, F and G.

PART 2

THOSE PARTS OF ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

Table 6

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of the relevant part of access</i>
In the District of Rhondda Cynon Taf	Main Avenue	Those parts of the modified accesses at Main Avenue providing permanent access to numbered work 2 and shown on the rights of way, streets and access plan hatched red between points marked D and E, F and G.
In the District of Rhondda Cynon Taf	Fourth Avenue	That part of the modified access at Fourth Avenue shown on the rights of way, streets and access plan hatched red between points marked I and J for access to numbered work 2.

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

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

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2) and (3).

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

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

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

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

Application of the 1965 Act

3.—(1) The 1965 Act 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, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

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

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

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

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

(a) 1973 c.26.

of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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

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

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

the Hirwaun Generating Station Order 2015 (“the Order”) ceases, in relation to that person, to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

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

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

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

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

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

7. Section 11 of the 1965 Act (powers of entry) is modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this

purpose to have been created on that date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

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

SCHEDULE 6

Article 26

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 7

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Land forming part of public adopted highway known as Main Avenue, Hirwaun	1a_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G
Land forming part of public adopted highway known as Main Avenue, Hirwaun	1b_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G
Land situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun	2a_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G
Land forming part of the northern half width of public adopted highway known as Rhigos Road together with a bus lay-by, situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun	3a_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G
Land forming part of the northern half width of public adopted highway and drain known as Rhigos Road together with part of a Public Right of Way leading from Rhigos Road to Main Avenue situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun	3b_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G
Land and overhead electricity lines forming part of the southern half width of public adopted highway known as Rhigos Road situated	4a_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
to the south of Building 6, Hirwaun Industrial Estate, Hirwaun			
Land and overhead electricity lines forming part of the southern half width of public adopted highway and drain known as Rhigos Road situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun	4b_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G
Land forming part of the southern half width of public adopted highway known as Rhigos Road situated to the south of Building 6, Hirwaun Industrial Estate, Hirwaun	5a_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G
Agricultural land, drains and overhead electricity lines (including poles) situated to the east and south east of The Fairways, Hirwaun	6a_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G
Agricultural land, drains and overhead electricity lines (including poles) situated to the east and south east of The Fairways, Hirwaun	6b_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G
Land and overhead electricity lines situated to the east of The Fairways, Hirwaun	6c_GR	Temporary use to facilitate construction for numbered work 2G	Part of numbered work 2G

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID

Application

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

Interpretation

2. In this Part of this Schedule—

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

“apparatus” means

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

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

“commence” has the same meaning as under section 56 of the 1990 Act and means the earliest date on which any material operation comprised in the authorised development begins to be carried out and commencement shall be construed to have the same meaning;

“functions” includes powers and duties;

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

“National Grid” means either—

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

as the context shall require;

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

3. Except for paragraphs 4 (apparatus in streets subject to temporary prohibition or restriction), 8, 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) this Schedule does not

(a) 1989 c.29.

apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

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

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

Acquisition of land

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

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

Removal of apparatus

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

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 7 sub-paragraph (1) below) the necessary facilities and rights for—

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

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

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

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph 7 sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 39 of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

8.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works specified in National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" that are within the proximities described therein to any apparatus the removal of which has not been required by the undertaker under paragraph 6 sub paragraph (2) or otherwise, the undertaker must submit to National Grid a plan.

(2) In relation to works which will be situated on, over, under or within 15 metres measured in any direction of any apparatus to which sub-paragraph (1) applies, or (wherever situated) impose any load directly upon any such apparatus or involve embankment works within 15 metres of any such apparatus, the plan to be submitted to National Grid under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22").

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

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

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

(b) must not be unreasonably withheld.

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

(6) Works executed under sub-paragraphs (1) or (2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4), (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

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

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

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

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

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

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

Retained apparatus: protection of National Grid as Electricity Undertaker

9.—(1) Not less than 56 days before the commencement of any authorised development under this Order that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6 sub-paragraph (2) or otherwise and to which sub-paragraph (2)(i) or (2)(ii) applies, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted under sub-paragraph (1) shall show—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

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

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

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

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

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

(6) In relation to a work to which sub-paragraph (1), (2) or (3) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraph (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), (3) or (5), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the undertakers' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1), (2), (3) or (5) (except in an emergency).

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

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

new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

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

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

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

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by that undertaker 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 National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6 sub-paragraph (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;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 39 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not

possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

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

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

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any material damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-paragraph 3(b) shall be subject to the full terms of this Schedule including this paragraph 11 in respect of such new apparatus.

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

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 11 applies. If requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 11 for claims reasonably incurred by National Grid.

Enactments and agreements

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

Co-operation

13. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 6 sub-paragraph (2) and paragraphs 8 or 12) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party's operations.

Access

14. If in consequence of the agreement reached in accordance with paragraph 5 sub-paragraph (1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1), 8 and 9 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 39 (arbitration) of the Order.

PART 2

FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION

16. For the protection of WPD as referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and WPD, have effect.

17. In this Part of this Schedule—

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

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

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

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

“WPD” means Western Power Distribution (South Wales) PLC (company number 02366985) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB;

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

for the avoidance of doubt, all other terms are as defined in Part 1 of the Order.

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

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

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

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

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph 20(2), WPD must on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its reasonable endeavours to obtain the alternative rights in other land in which the alternative apparatus is to be constructed.

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39 of the Order and after the grant to WPD of any alternative rights, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) In respect of apparatus on plots numbered 1_MS and 3_MS in the book of reference and land plans—

(a) if requested by the undertaker, WPD must remove any of its apparatus within a building on those plots (or relocate such apparatus as applicable) within 56 days of the undertaker making such a request, unless factors outside the control of WPD prevent such a removal or relocation within the 56 day time period (for the avoidance of doubt the 56 day period

shall only begin once all necessary consents and permissions for the relevant removal or relocation have been granted); and

- (b) WPD and the undertaker may agree for the undertaker to remove or relocate as applicable any of such apparatus; and
- (c) following the removal or relocation by WPD or the undertaker (as applicable) under sub-paragraph 20(5)(a) or 20(5)(b), the undertaker may demolish such building(s).

21.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 20(2), the undertaker must submit to WPD a plan, section and description of the works to be executed. For the avoidance of doubt, if any works referred to require any diversion or require WPD to obtain any alternative rights, the undertaker shall give WPD sufficient notice to obtain any such alternative rights and shall not commence works of the type described unless or until any such alternative rights have been obtained.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph 21(1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 21(3) by WPD for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

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

(4) If WPD in accordance with sub-paragraph 21(3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 16 to 20 apply as if the removal of the apparatus had been required by the undertaker under paragraph 20(2)).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than the reasonable period provided for in sub-paragraph 21(3) before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph 21(1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph 21(1)) in so far as is reasonably practicable in the circumstances.

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

(2) The value of any apparatus removed under the provisions of this Part of the Schedule is to be deducted from any sum payable under sub-paragraph 22(1), that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 39 of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as

the case may be, the amount which apart from this sub-paragraph would be payable to WPD by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph 22(3)—

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

(5) An amount which apart from this sub-paragraph would be payable to WPD in respect of works by virtue of sub-paragraph 22(1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on WPD 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.

23. The undertaker will indemnify WPD and keep them indemnified in respect of any losses, costs, claims or liabilities arising out of, or as a consequence of anything done under this Part of this Schedule.

PART 3
FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE
UNDERTAKERS

24. For the protection of the utility undertakers referred to in this Part of this Schedule (save for National Grid, which is protected by and as defined in Part 1 of this Schedule, WPD, which is protected by and as defined in Part 2 of this Schedule and DCC, which is protected by and as defined in Part 7 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

25. In this Part of this Schedule—

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

“apparatus” means—

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

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

“functions” includes powers and duties;

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

“utility undertaker” means—

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

(a) 1991 c.56. Section 51A to the 1991 Act was inserted by section 92(1) of the Water Act 2003 (c.37).

(b) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

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

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

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

29.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 39 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling

around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

30.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 39 (arbitration).

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

31.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 29(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

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

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 24 to 30 apply as if the removal of the apparatus had been required by the undertaker under paragraph 29(2).

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

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

32.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 29(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 39 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 29(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

33.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 29(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

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

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

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

PART 4
FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS

35.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

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

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

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

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

“electronic communications code network” means—

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

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

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

36. The exercise of the powers of article 28 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(d) (undertaker’s works).

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

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

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

(a) 2003 c.21.

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

(c) See section 106.

(d) 1984 c.12. Paragraph 23 was amended by section 190 of, and paragraph 68 of Schedule 25 and part 1 of Schedule 27 to, the Water Act 1989 (c.15), section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and section 106(2) of, and Schedule 3 to, the Communications Act 2003.

undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 39 (arbitration).

38. This Part of this Schedule does not apply to—

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

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

PART 5
FOR THE PROTECTION OF AFFECTED PERSONS

40. For the protection of affected persons as referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the affected person concerned, have effect.

41. In this Part of this Schedule—

“affected person” means a person who—

(a) is identified in column 3 of the tables at sections 1.3, 2.3 and 3.3 of the book of reference as having the benefit of any right listed in column 4 of the tables at sections 1.3, 2.3 and 3.3 of the book of reference; and

(b) is not subject to any protective provisions set out in Parts 1-4 and Part 6 of this Schedule;

“affected rights” means the rights listed in column 4 of the tables at sections 1.3, 2.3 and 3.3 of the book of reference in relation to the Order land for an affected person to:

(a) pass along, or exercise rights of access over, Order land; or

(b) connect to, use, maintain, repair or renew services in, on or over the Order land;

“services” means water, gas, electricity, sewerage and/or telecommunications services;

for the avoidance of doubt, all other terms are as defined in Part 1 of this Order.

42. The undertaker must comply with paragraphs 43 and 44.

43. In respect of part (a) of the definition of “affected rights”—

(1) where the undertaker interferes with such affected rights, such interference, in so far as reasonably practicable, must be to the minimum area and for the minimum period; and

(2) where the undertaker requires suspension as a result of the exercise of the powers under the Order, the undertaker must provide alternative access which is no less convenient than the access enjoyed prior to the suspension for the period in which the affected rights are suspended.

44. In respect of part (b) of the definition of “affected rights”—

(1) where the undertaker requires the extinguishment of any such affected rights, the undertaker must not extinguish such affected rights unless and until replacement rights have been granted to the affected person on equivalent terms and conditions to those affected rights that are being extinguished save that this sub-paragraph will not apply where such replacement rights can only be obtained on land outside the Order land; and

(2) where the undertaker requires the relocation of any such affected rights, the undertaker must not interfere with or suspend such affected rights unless and until the relocated affected rights have been brought into operation provided that this sub-paragraph will not apply where the relocated affected rights can only be obtained on land outside the Order land.

45. The undertaker is not required to comply with paragraphs 43 and 44 in a case of emergency but in that case it must give to the affected person notice of the interference or suspension with the affected right as soon as is reasonably practicable and thereafter comply with paragraphs 43 and 44 in so far as is reasonably necessary and practicable in the circumstances.

PART 6

FOR THE PROTECTION OF TOWER REGENERATION LIMITED

46. For the protection of Tower Regeneration Limited the following provision, unless otherwise agreed in writing between the undertaker and Tower Regeneration Limited, has effect.

47.—(1) The undertaker must not—

(2) vest the land identified in the book of reference and the land plans by plot reference numbers 10_GR and 11_GR in itself;

(3) exercise the powers conferred on it by article 26 in respect of the land identified in the book of reference and the land plans by plot reference numbers 10_GR, 10a_GR, 11_GR and 11a_GR;
or

(4) commence the authorised development on the land identified in the book of reference and the land plans by plot reference numbers 10_GR, 10a_GR, 11_GR and 11a_GR;
no earlier than 2nd January 2018.

PART 7

FOR THE PROTECTION OF DWR CYMRU CYFYNGEDIG

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

49. In this Part of this Schedule—

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

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

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

“clearance area” means the area of land—

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

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

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

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

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

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

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

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

for the avoidance of doubt, all other terms are as defined in Part 1 of this Schedule or article 2 of this Order.

50.—(1) Subject to sub-paragraph 50(2), regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any

DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Schedule.

(2) Sub-paragraph 50(1) shall not apply to the rights either conferred on, or obtainable by, the undertaker under this Order in relation to Plots 3_ER, 4_ER, 5_ER and 6_ER (as described in the book of reference) insofar as these may temporarily interfere with DCC's rights to access DCC apparatus or accessories but subject always to paragraphs 54 and 55 of this Part and to the undertaker giving DCC 28 days' notice of such interference.

Precedence of the WIA 1991

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

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

(2) The arbitration provisions at article 39 or specified in this Schedule shall not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.

Protection of DCC apparatus

52.—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DCC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 51(1)(k), the undertaker shall submit to DCC written notice together with a draft specification.

(2) DCC shall examine the draft specification submitted under sub-paragraph 52(1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph 52(2) shall be repeated where those amendments are not accepted). For the avoidance of doubt, DCC's proposed amendments may include such reasonable requirements for the alteration (including but not limited to the extension of DCC apparatus) or otherwise for the protection of DCC apparatus, or for securing access to it.

(3) Once approved under sub-paragraph 52(2), the draft specification shall become the specification and the works shall be executed only in accordance with the specification and such

reasonable requirements as may be made in accordance with sub paragraph 52(2) and DCC shall be entitled to watch and inspect the execution of those works.

(4) Nothing in this paragraph 52 shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 52 shall apply to and in respect of the new draft specification.

(5) The undertaker shall not be required to comply with sub-paragraph 52(1) in a case of emergency provided it has complied with paragraph 55 below save that the undertaker shall comply with sub-paragraphs 52(1) and (3) above in so far as is reasonably practicable in the circumstances.

(6) DCC may opt to carry out any temporary and/or protective works specified under sub-paragraph 52(2) to DCC apparatus, and if DCC opts to do so it shall—

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

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

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

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

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

Suspension of works

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

- (a) the undertaker shall procure that it and its contractor(s) and subcontractor(s) shall forthwith suspend or cease the works having due regard to health and safety factors and shall discuss and agree with DCC the remedial actions required prior to resuming the works;
- (b) the undertaker and DCC shall act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
- (c) DCC shall submit to the undertaker within 3 days following the suspension, a written notice specifying the reasons for suspending the works;

(d) in the event that DCC fails to supply the written notice within 3 days of suspension DCC's instruction to suspend the works shall be void and the undertaker shall be entitled to recommence the works; and

(2) DCC shall commence, carry out and complete any remedial works pursuant to sub-paragraph 53(a), as soon as reasonably practicable and DCC shall give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker shall be entitled to resume the works.

(3) DCC shall be entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 53.

54.—(1) In the event that either the undertaker or DCC (for the purpose of this paragraph 54 "the party" or together "the parties") wishes to take any action which would impact on the ability of the undertaker to carry out the development or DCC to carry out its statutory functions, the parties shall use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party's works. In respect of the references to 'work' and 'works' in this sub-paragraph 54(1), to the extent that this refers to 'work' or 'works' to be undertaken by DCC, the definition of works in paragraph 49 of this Part does not apply.

(2) Subject to paragraph 55, differences or disputes arising between the undertaker and DCC under this Schedule shall, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 39 (arbitration) of the Order.

Emergency Works

55.—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works. For the avoidance of doubt, in the event that DCC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 57 shall apply.

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

(3) Emergency works required in order for DCC to fulfil its statutory functions under sub-paragraph 55(2) shall take precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker shall reschedule its works accordingly.

(4) In respect of the references to 'work' and 'works' in this paragraph 55, to the extent that this is 'work' or 'works' to be undertaken by DCC, the definition of works in paragraph 49 of this Part does not apply.

Insurance

56. The undertaker shall not commence any works under paragraph 52(1) to this Part unless and until the undertaker has procured acceptable insurance.

Damage to DCC apparatus

57.—(1) Subject to sub-paragraphs 57(3), (4) (5) and (6), the undertaker shall indemnify and hold harmless DCC against all claims demands costs damages expenses penalties and losses which DCC may have or sustain or become liable for in consequence of works under paragraph 52(1) to this Part in respect of—

- (a) the commencement, carrying out, execution or retention of the works or any breach of this Part relating to the performance of the works and shall pay compensation for loss, damage or injury caused by the actions or default of the undertaker, its contractors, subcontractors, licensees, agents and invitees relating to the performance of the works; and
- (b) damage to the environment caused by the undertaker during any works including but not limited to pollution and/or contamination; and

(c) any breach of any stipulation or otherwise of any deeds of grant (or any renewal of any of the deeds of grant made on substantially the same terms provided that DCC has supplied the undertaker with a copy of the new document) arising from the works; and

(2) Subject to sub-paragraphs 57(3), (4), (5) and (6), the undertaker shall bear and pay the costs reasonably incurred by DCC in making good damage to DCC apparatus or restoring an interruption in the supply provided by DCC.

(3) Nothing in sub-paragraph 57(1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DCC, its officers, servants, contractors or agents.

(4) DCC shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker. .

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

(6) DCC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 57 applies. If requested to do so by the undertaker, DCC shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 57 for claims reasonably incurred by DCC.

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by an article or requirement (including agreement or approval in respect of part of an article or requirement) included in this Order the relevant planning authority must give notice to the undertaker of their decision on the application within a period of eight (8) weeks beginning with—

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

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

(3) Where—

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

then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(4) Where an application is made to the relevant planning authority as referred to in paragraph (1) of this Schedule, such application must draw the relevant planning authority's attention to the procedure set out in paragraphs (1)-(3) of this Schedule.

(5) Where an application is made to the relevant planning authority for any consent, agreement or approval required by requirement 4(3), 10(1) or 16(1) (including agreement or approval in respect of part of a requirement), the applicant must at the same time as making the application send a copy of the materials provided in support of the application to Brecon Beacons National Park Authority or Natural Resources Wales (as the case may be) and must draw Brecon Beacons National Park Authority's or Natural Resources Wales' (as the case may be) attention to the procedure set out in paragraphs (1)-(3) of this Schedule and state that any comments must be provided to the relevant planning authority within 21 days if they are to be considered by the relevant planning authority.

(6) Where an application is made to the relevant planning authority for any consent, agreement or approval required by requirement 4(3), 10(1) or 16(1) (including agreement or approval in respect of part of a requirement), the relevant planning authority is not required to consider comments received from Brecon Beacons National Park Authority or Natural Resources Wales (as the case may be) more than 21 days after the date of the application.

(7) Where an application is made to the relevant planning authority for any consent, agreement or approval required by an article or requirement included in this Order and the relevant planning authority intends to consult Brecon Beacons National Park Authority or Natural Resources Wales in relation to that application the undertaker must as soon reasonable practicable comply with any

direction from the relevant planning authority to provide a copy of the materials provided in support of the application to each body specified in the direction.

Further information

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

(2) In the event that it considers such further information to be necessary it must, within twenty one (21) business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant planning authority does not give such notification within this twenty one (21) day period it is deemed to have sufficient information to consider the application and thereafter is not entitled to request further information without the prior agreement of the undertaker.

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

Appeals

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

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

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

- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (b) The Secretary of State must appoint a person as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent;
- (c) The relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty (20) business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) The appeal parties must make any counter-submissions to the appointed person within twenty (20) business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty (30) business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

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

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five (5) business days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and any requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten (10) business days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(e).

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 1 of this Order as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Welsh Government Circular NAFWC 07/2003 Planning (and analogous) Appeals and Call-in Procedures or any circular or guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Hirwaun Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. This Order also makes further provision for the transfer of the benefit of the Order.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 36 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Rhondda Cynon Taf County Borough Council at Headquarters, The Pavilions, Cambrian Park, Clydach Vale, Tonypany CF40 2XX.

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