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STATUTORY INSTRUMENTS

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**2015 No. 1984**

**INFRASTRUCTURE PLANNING**

**The Port Talbot Steelworks Generating Station Order 2015**

*Made - - - - 8th December 2015*

*Coming into force - - 30th December 2015*

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

The application has been examined by a single appointed person who has made a report to the Secretary of State under section 83(1) of the 2008 Act. After receiving the report, the Secretary of State requested further information from various persons.

The Secretary of State has considered the report and recommendation of the single appointed person, has taken into consideration the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009<sup>(2)</sup> and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

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

**PART 1**

**PRELIMINARY**

**Citation and commencement**

**1.** This Order may be cited as the Port Talbot Steelworks Generating Station Order 2015 and comes into force on 30th December 2015.

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(1) [2008 c.29](#). Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act [2011 \(c.20\)](#). Section 83(1) was amended by paragraph 35 of that Schedule. Section 104(2) was amended by paragraph 49 of that Schedule and section 58 of the Marine and Coastal Access Act [2009 \(c.23\)](#). Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, that Act.

(2) [S.I. 2009/2263](#); regulation 3 was amended by [S.I. 2012/635](#) and [2012/787](#).

## Interpretation

### 2.—(1) In this Order—

- “1961 Act” means the Land Compensation Act 1961(3);
- “1965 Act” means the Compulsory Purchase Act 1965(4);
- “1980 Act” means the Highways Act 1980(5);
- “1990 Act” means the Town and Country Planning Act 1990(6);
- “1991 Act” means the New Roads and Street Works Act 1991(7);
- “2008 Act” means the Planning Act 2008;
- “apparatus” has the same meaning as in Part 3 of the 1991 Act(8);
- “authorised development” means the development set out in Schedule 1 (authorised development);
- “book of reference” means the document certified by the Secretary of State under article 22 (certification of plans, etc.) as the book of reference;
- “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(9);
- “design and access statement” means the document certified by the Secretary of State under article 22 as the design and access statement;
- “design principles document” means the document certified by the Secretary of State under article 22 as the design principles document;
- “environmental statement” means the document certified by the Secretary of State under article 22 as the environmental statement;
- “highway” has the same meaning as in the 1980 Act(10);
- “highway authority” has the same meaning as in the 1980 Act(11);
- “land plans” means the plans certified by the Secretary of State under article 22 as the land plans;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of “maintain” must be construed accordingly;
- “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;
- “Order limits” means the limits shown on the works plans;
- “owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981 (interpretation)(12);
- “relevant planning authority” means Neath Port Talbot County Borough Council as the planning authority for the area in which the authorised development is situated;

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(3) 1961 c.33.

(4) 1965 c.56.

(5) 1980 c.66.

(6) 1990 c.8.

(7) 1991 c.22.

(8) “Apparatus” is defined in section 105(1).

(9) “Carriageway” is defined in section 329(1).

(10) “Highway” is defined in section 328(1).

(11) See section 1.

(12) 1981 c.67. The definition was amended by paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34).

“Requirement” means a Requirement set out in Schedule 2 (Requirements); and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of that Schedule with the same number;

“street” means a street within the meaning of section 48 of the 1991 Act(13) together with land on the verge of a street or between 2 carriageways and includes part of a street;

“substation works” means the modifications to the Grange and Cefn Gwrgan substations comprising Work No. 2(b);

“undertaker” means Tata Steel UK Limited(14) (company number 2280000) or any other person who for the time being has the benefit of this Order in accordance with article 7 (consent to transfer benefit of Order);

“watercourse” includes any river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

“Work” means a Work set out in Schedule 1; and a reference to a Work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A”), is a reference to the Work so designated in that Schedule;

“works plans” means the plans certified by the Secretary of State under article 22 as the works plans.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate, and distances between points on a Work must be taken to be measured along that Work.

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

(5) References in this Order to any statutory body include that body’s successor bodies as from time to time have jurisdiction in relation to the authorised development.

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

## PART 2

### PRINCIPAL POWERS

#### **Development consent granted by Order**

3.—(1) Subject to the provisions of this Order and to the Requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits and in accordance with the works plans.

(2) In constructing or maintaining a Work, the undertaker may deviate laterally from the lines or situations shown on the works plans within the limits of deviation relating to that Work and shown on those plans.

(3) Schedule 2 (which contains the Requirements) has effect.

#### **Power to maintain authorised development**

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

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

(14) The registered office of Tata Steel UK Limited is 30 Millbank, London SW1P 4WY.

(2) In maintaining the authorised development, the undertaker may remove or replace any constituent part, but not the whole, of a Work.

### **Operation of generating station**

5.—(1) The undertaker is authorised to operate the generating station for which development consent is granted by this Order.

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

### **Benefit of Order**

6. Subject to article 7, the provisions of this Order have effect solely for the benefit of the undertaker.

### **Consent to transfer benefit of 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 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 between the undertaker and the lessee.

(2) The requirement to obtain the consent of the Secretary of State under paragraph (1) does not apply to a transfer or grant to a licence holder within the meaning of Part 1 of the Electricity Act 1989<sup>(15)</sup> of the benefit of such provisions of this Order and related statutory rights as may be agreed between the undertaker and the licence holder as being reasonably necessary for the purposes of carrying out the substation works.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under this article 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 making the transfer or grant.

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

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(16)</sup> (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with the noise management plan approved by the relevant planning authority under Requirement 11 (approval and implementation of construction mitigation plans);

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<sup>(15)</sup> 1989 c.29. See section 64(1).

<sup>(16)</sup> 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25). Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c.40) and paragraph 6 of Schedule 17 to the Environment Act 1995.

- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided;
- (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and is attributable to the use of the authorised development in accordance with a noise management scheme approved by the relevant planning authority under Requirement 14 (control of noise during operational phase); or
- (d) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974<sup>(17)</sup> (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

## PART 3 STREETS

### Street works

**9.**—(1) In relation to any of the streets within the Order limits, the undertaker may, for the purposes of the authorised development,—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

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

(3) Sections 54 to 106 of the 1991 Act<sup>(18)</sup> apply to any street works carried out under paragraph (1).

## PART 4 SUPPLEMENTAL POWERS

### Discharge of water

**10.**—(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.

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<sup>(17)</sup> 1974 c.40. Section 61(9) was amended by paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

<sup>(18)</sup> A number of these provisions have been amended, including by the Traffic Management Act 2004 (c.18).

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(19) (right to communicate with public sewers).

(3) The undertaker must not discharge water into a watercourse or a 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 a public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a consent granted by the Natural Resources Body for Wales.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or a 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 a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010(20).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain that belongs to the Homes and Communities Agency, the Natural Resources Body for Wales, a harbour authority within the meaning of section 57 of the Harbours Act 1964(21) (interpretation), an internal drainage board, a local authority, a sewerage undertaker(22) or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(23) have the same meaning as in that Act.

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

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

(a) survey or investigate the land;

(b) without limiting sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limiting sub-paragraph (a), carry out ecological or archaeological investigations on the land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and the 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.

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(19) 1991 c.56. Section 106 was amended by section 35(8)(a) and 43(2) of, and by Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the Water Act 2003 (c.37).

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

(21) 1964 c.40.

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

(23) 1991 c.57.

- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required, before entering the land, produce written evidence of authority to do so; and
  - (b) may take with him or her such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes may be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority,
- but such consent must not be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

## PART 5

### POWERS OF ACQUISITION

#### Compulsory acquisition of rights

**12.**—(1) The undertaker may create and compulsorily acquire the new rights affecting the Order land described in Part 1 of the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act (provisions as to divided land), as substituted by paragraph 5 of Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 3 has effect for the purpose of modifying the enactments referred to in that Schedule in their application to the compulsory acquisition under this Order of a right by the creation of a new right.

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

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

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

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

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

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

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

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(24) 1981 c.66. Section 3(4) was amended by paragraph 37 of Schedule 5 to the Infrastructure Act 2015 (c.7).



- (a) omit “(1)(b)” and substitute “(1)”; and
  - (b) after “given” insert “and published”.
- (5) In that section, omit subsections (5) and (6) and substitute—
- “(5) For the purposes of this section, a person has a relevant interest in land if—
- (a) the person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
  - (b) the person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds 1 month.”
- (6) In section 5 (earliest date for execution of declaration)—
- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
  - (b) omit subsection (2).
- (7) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 must be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of rights under this Order.

#### **Compulsory acquisition of land: minerals**

14.—(1) Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981, except for paragraph 8(3) of that Schedule, are incorporated in this Order, subject to the modification set out in paragraph (2).

(2) Omit “acquiring authority” wherever that expression occurs and substitute “undertaker” in each case.

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

15. After 7th December 2020—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 13 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

#### **Acquisition of subsoil or airspace only**

16.—(1) The undertaker may acquire compulsorily such rights in the subsoil of or the airspace over the land referred to in article 12(1) (compulsory acquisition of rights) as may be required for any purpose for which rights over that land may be acquired under that paragraph.

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

#### **Private rights**

17.—(1) 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 are unenforceable or, where so notified by the undertaker, extinguished insofar as in either case their continuance would be inconsistent with the exercise by the undertaker of the rights acquired—



- (a) as from the date of the acquisition of the rights 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<sup>(25)</sup> (power of entry),

whichever is earlier.

(2) Subject to the provisions of this article, any private rights over the Order land owned by the undertaker are suspended and are unenforceable or, where so notified by the undertaker, extinguished insofar as in either case their continuance would be inconsistent with any activity authorised by this Order—

- (a) in the case of a suspension, as from the commencement of the activity authorised by this Order that interferes with such rights; and
- (b) in the case of an extinguishment, on the date specified in the notice given by the undertaker.

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

(4) This article does not apply to any right in relation to which section 138 of the 2008 Act<sup>(26)</sup> (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 18 (statutory undertakers) applies.

(5) Paragraph (1) has effect subject to any agreement made, insofar as it relates to the authorised development, at any time between the undertaker and the person in or to whom the right in question is vested, belongs or benefits.

- (6) If an agreement referred to in paragraph (5)—
  - (a) is made with a person in or to whom the right is vested, belongs or benefits; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

### **Statutory undertakers**

**18.**—(1) The undertaker may, subject to Schedule 4 (protective provisions), acquire compulsorily new rights over land belonging to, extinguish rights of, or remove or reposition apparatus belonging to, statutory undertakers over or within the Order land.

(2) In this article, “statutory undertaker” means a person falling within section 127(8) of the 2008 Act.

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<sup>(25)</sup> Section 11 was amended by paragraph 14 of Schedule 4 to the Acquisition of Land Act 1981, paragraph 12 of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), Part 1 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).

<sup>(26)</sup> Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013 (c.27).

## PART 6

### MISCELLANEOUS AND GENERAL

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

**19.**—(1) This article applies to—

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

so far as the agreement relates to the terms on which land that is the subject of a lease granted by or under the 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 an 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 a lease granted by or under an agreement to which this article applies 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 a party to the lease any right or obligation arising out of or connected with anything done or omitted on or in relation to land that is the subject of the lease, in addition to a right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by a party to the lease of an obligation of any other party under the lease.

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

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

#### **Protective provisions**

**21.** Schedule 4 (protective provisions) has effect.

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

**22.**—(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 (document 4.03 Rev1, April 2015);
- (b) the design and access statement (document 10.03, July 2014);
- (c) the design principles document (document DPD1.01, April 2015);
- (d) the environmental statement (documents 6.01 to 6.04.7, July 2014);
- (e) the land plans (document 2.03, July 2014); and
- (f) the works plans (document 2.04, July 2014),

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

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

### Service of notices

**23.**—(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(27) as it applies for the purposes of this article, the proper address of any person in relation to the service on the person of a notice or document under paragraph (1) is, if the person has given an address for service, that address, and otherwise—

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

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

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

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

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

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

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

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

- (a) the person must give notice in writing or by electronic transmission revoking any consent given by the person for that purpose; and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice, but the date must not be less than 7 days after the date on which the notice is given.
- (9) This article must not be taken to exclude the employment of any method of service not expressly provided for by it.
- (10) In this article—
- “address” includes any number or address used for the purposes of electronic transmission;
  - “electronic transmission” means a communication transmitted—
    - (a) by means of an electronic communications network; or
    - (b) by other means in electronic form.

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

**24.**—(1) Where an application is made to, or request is made of, the relevant planning authority, the highway 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 this Order (including a Requirement), the consent, agreement or approval, if given, must be given in writing and must not be unreasonably withheld.

(2) Schedule 5 (procedure for discharge of Requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the Requirements.

#### **Arbitration**

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

#### **Crown rights**

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

- (a) to take, use, enter on or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners<sup>(28)</sup>;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or the Welsh Government or held in trust for Her Majesty for the purposes of a government department or the Welsh Government without the consent in writing of that government department or the Welsh Government; or

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(28) “Crown Estate Commissioners” is defined in Schedule 1 to the Interpretation Act 1978.

- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in section 227 of the 2008 Act) that is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in that section).
- (2) A consent under paragraph (1)—
  - (a) may be unconditional or subject to terms and conditions;
  - (b) may be given electronically.

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

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

8th December 2015

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## SCHEDULE 1

Article 2(1)

## AUTHORISED DEVELOPMENT

In the County Borough of Neath Port Talbot—

The construction, operation and maintenance of a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, being an electricity generating station located on the site of the Port Talbot steelworks, with a nominal gross electrical output capacity of up to 150 megawatts, fuelled by gases produced during the steelmaking process with natural gas provided as a back up, comprising—

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

- (a) up to 2 steam boilers and their associated stacks, boiler house and annexe bay;
- (b) a set of steam turbo-alternators and their associated condensers and turbine building;
- (c) a 66 kilovolt electricity switchgear station building containing gas-insulated switchgear and associated control rooms, and infrastructure (including cables) to provide a connection to Work No. 2;
- (d) a cooling tower unit comprising—
  - (i) a cooling tower;
  - (ii) a cooling tower electrical control room; and
  - (iii) cooling water pump house;
- (e) ancillary buildings, structures and plant including—
  - (i) electrical equipment;
  - (ii) administration and control building;
  - (iii) main and auxiliary transformers;
  - (iv) condensate polisher, condensate pumps and condensate storage tank;
  - (v) oil water separator;
  - (vi) water treatment plant and chemical dosing system skids;
  - (vii) boiler feed pumps;
  - (viii) low pressure gas boosters; and
  - (ix) emissions monitoring system;
- (f) pipe racks;
- (g) a fire protection system; and
- (h) a car parking area.

**Work No. 1B** – development comprising a construction compound, temporary laydown storage area and temporary construction site offices.

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

- (a) the connection of Work No. 1A to the existing onsite infrastructure through—
  - (i) the extension of existing pipework (for water, nitrogen, process gases, natural gas, steam and compressed air); and
  - (ii) connections to the drainage systems, electrical cables and other utilities;
- (b) security infrastructure including perimeter fencing;
- (c) internal roadways including connections to the existing internal roadway;
- (d) site drainage and waste management infrastructure;

- (e) landscaping including tree planting, fencing and other boundary treatments; and
- (f) site lighting infrastructure.

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

- (a) the installation of 66 kilovolt electrical cables approximately 2.8 kilometres in length from Work No. 1A to the Grange and Cefn Gwrgan substations. The cables will either be installed underground or supported for part of the route by existing above-ground structures or, if necessary, by a steel lattice cable bridge to be erected between the 2 substations; and
- (b) modifications to the Grange and Cefn Gwrgan substations to accept the electrical cables, including the installation of new 66 kilovolt bays at each substation, consisting of an open 66 kilovolt bus bar arrangement, incorporating—
  - (i) bus bar isolators;
  - (ii) gas-insulated switchgear circuit breakers;
  - (iii) line isolator and earth switches;
  - (iv) voltage transformers;
  - (v) interconnecting 66 kilovolt open bus bars;
  - (vi) cable sealing ends;
  - (vii) associated system earth requirements; and
  - (viii) protection and control equipment.

In connection with the Works and to the extent that they do not form part of a Work, development comprising—

- (a) construction laydown areas, working sites, storage areas, temporary top soil storage areas and temporary structures including temporary fencing and lighting;
- (b) modifications to the existing internal road layout for the provision of site vehicular access, parking and cycle storage;
- (c) works to alter the position of apparatus below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus;
- (d) works for the benefit or protection of land affected by the authorised development; and
- (e) footpaths, cycle tracks, shafts, foundations, retaining walls, drainage, fencing and culverts,

only within the Order limits and insofar as such development is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2

Article 3(3)

### REQUIREMENTS

#### Interpretation

1.—(1) In this Schedule—

“commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), comprised in or carried out for the purposes of the authorised development; and “commence” and “commenced” must be construed accordingly;



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“commissioning” means the process during which plant components and systems, having been constructed or modified, are made operational and are tested and verified to be in accordance with design assumptions and to have met the appropriate safety criteria;

“stage” means a stage of the construction of the authorised development, the extent of which is set out in the notice given to the relevant planning authority under Requirement 3 (stages of authorised development).

(2) Where a Requirement provides that the authorised development is to be carried out in accordance with details or a scheme, plan, code or other document approved or agreed by the relevant planning authority, the approved or agreed details, scheme, plan, code or other document must be taken to include any amendments or revisions subsequently approved or agreed by the relevant planning authority.

**Time limits**

2.—(1) The authorised development must be commenced on or before 7th December 2020.

(2) If the notice given to the relevant planning authority under Requirement 3 states that the authorised development is to be constructed in 2 stages, the second stage must be commenced within 10 years of the commencement of the first stage.

**Stages of authorised development**

3.—(1) The authorised development must not be commenced until the undertaker has given a written notice to the relevant planning authority stating whether the authorised development is to be constructed in 1 stage or 2 stages.

(2) If the notice states that the authorised development is to be constructed in 2 stages, the notice must state the extent of the authorised development that is to be constructed in each stage, which must not exceed the maximum parameters set out in Requirement 4 (detailed design).

(3) The authorised development must be constructed in accordance with the number of stages specified in the notice.

**Detailed design**

4.—(1) Subject to sub-paragraph (3), the elements of the authorised development set out in column 1 of Table A—

- (a) must not exceed the maximum dimensions set out in relation to that element in columns 2 to 4; and
- (b) must comply with the other parameters set out in relation to that element in column 5.

**Table A**

<i>(1) Element of authorised development</i>	<i>(2) Maximum height  (metres)</i>	<i>(3) Maximum width  (metres)</i>	<i>(4) Maximum length  (metres)</i>	<i>(5) Other parameters</i>
Stacks	80			Maximum of 2.  Minimum height of 80 metres.

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(1) Element of authorised development	(2) Maximum height  (metres)	(3) Maximum width  (metres)	(4) Maximum length  (metres)	(5) Other parameters
Cooling tower unit	22	25	160	Maximum area of 2,560 square metres.  Maximum volume of 56,320 cubic metres.
Turbine hall	25	85	55	Maximum area of 3,575 square metres.  Maximum volume of 89,375 cubic metres.
Boiler house	35 (at apex)	65	60	Maximum area of 3,900 square metres.  Maximum volume of 136,500 cubic metres.
Switchgear station	20	55	35	
Administration and control building	12	28	50	
Water treatment plant incorporating chemical dosing skids, condensate polisher, condensate pumps and condensate storage tank	10	60	60	
66 kilovolt electrical connection (Work No. 2(a))		4		
Cable bridge for section of 66 kilovolt electrical connection (Work No. 2(a))	5.5	4	800	The cable bridge may only be installed for the section of Work No. 2(a) between the Grange and

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(1) <i>Element of authorised development</i>	(2) <i>Maximum height</i> <i>(metres)</i>	(3) <i>Maximum width</i> <i>(metres)</i>	(4) <i>Maximum length</i> <i>(metres)</i>	(5) <i>Other parameters</i>
				Cefn Gwrgan substations.
Car parking area				Maximum of 30 parking spaces.
Perimeter fencing	3			

- (2) Subject to sub-paragraph (3), if the authorised development is constructed in 2 stages,—
- (a) the elements of the authorised development set out in column 1 of Table B constructed at the first stage—
- (i) must not exceed the maximum dimensions set out in in relation to that element in columns 2 to 4; and
  - (ii) must comply with the other parameters set out in relation to that element in column 5; and
- (b) the authorised development when completed at the second stage must not exceed the maximum dimensions and parameters set out in Table A.

**Table B**

(1) <i>Element of authorised development</i>	(2) <i>Maximum height</i> <i>(metres)</i>	(3) <i>Maximum width</i> <i>(metres)</i>	(4) <i>Maximum length</i> <i>(metres)</i>	(5) <i>Other parameters</i>
Stack	80			Maximum of 1.  Minimum height of 80 metres.
Cooling tower unit	22	25	80	Maximum area of 1,280 square metres.  Maximum volume of 28,160 cubic metres.
Turbine hall	25	45	55	Maximum area of 2,475 square metres.  Maximum volume of 61,865 cubic metres.

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(1) Element of authorised development	(2) Maximum height  (metres)	(3) Maximum width  (metres)	(4) Maximum length  (metres)	(5) Other parameters
Boiler house	35 (at apex)	45	60	Maximum area of 2,700 square metres.  Maximum volume of 94,500 cubic metres.
Switchgear station	20	55	35	
Administration and control building	12	28	50	
Water treatments plant incorporating chemical dosing skids, condensate polisher, condensate pumps and condensate storage tank	10	60	60	
66 kilovolt electrical connection (Work No. 2(a))		4		
Cable bridge for section of 66 kilovolt electrical connection (Work No. 2(a))	5.5	4	800	The cable bridge may only be installed for the section of Work No. 2(a) between the Grange and Cefn Gwrgan substations.
Car parking area				Maximum of 30 parking spaces.
Perimeter fencing	3			

(3) The relevant planning authority may at the request of the undertaker approve amendments to the maximum parameters for the turbine hall and boiler house set out in columns 3 and 4 of the Tables A and B, but such approval must not be given except in relation to minor or immaterial amendments that—

- (a) will not result in the parameters set out in column 5 of either Table being exceeded for the relevant building; and
- (b) have been demonstrated to the satisfaction of the relevant planning authority as being unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

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- (4) No stage of the authorised development may be commenced until written details of the following for that stage have been submitted to and approved by the relevant planning authority—
- (a) the layout, design, external appearance, dimensions and floor levels of all permanent buildings and structures;
  - (b) the colour, materials and surface finishes of all permanent buildings and structures; and
  - (c) the durability of all cladding materials.
- (5) The details to be submitted for approval under sub-paragraph (4) must—
- (a) be in accordance with the design and access statement and the design principles document; and
  - (b) include appropriately scaled plans and sectional drawings.
- (6) The authorised development must be carried out in accordance with the approved plans and any other approvals given by the relevant planning authority pursuant to this Requirement.

### **Decommissioning of existing generating station**

5.—(1) The undertaker must give written notice (the “completion notice”) to the relevant planning authority within 7 days of the date on which the commissioning of the authorised development is completed.

(2) If the authorised development is constructed in 2 stages, the duty in sub-paragraph (1) applies to the completion of commissioning of the second stage of the authorised development.

(3) The undertaker must cease to operate the existing generating station for the purposes of generating electricity as soon as reasonably practicable following service of the completion notice, having regard to the operational requirements of the steelworks, and in any event within 2 years of the date of the completion notice.

(4) Sub-paragraph (3) does not require the undertaker to demolish any part of the existing generating station.

(5) In this Requirement, “existing generating station” means—

- (a) Margam A boiler 5;
- (b) Margam B Mitchell boiler;
- (c) service boiler 4;
- (d) service boiler 5;
- (e) turbo alternator TA1;
- (f) turbo alternator TA2; and
- (g) turbo alternator TA3.

### **Provision of landscaping**

6.—(1) No stage of the authorised development may be commenced until a written landscaping scheme for that stage has been submitted to and approved by the relevant planning authority.

(2) The landscaping scheme must be in accordance with the design and access statement and chapter 7 of the environmental statement and must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed 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, signs and lighting;
  - (g) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
  - (h) details of existing trees to be retained, with measures for their protection during construction;
  - (i) retained historic landscape features and proposals for restoration, where relevant; and
  - (j) implementation timetables for all landscaping works.
- (3) All landscaping works must be carried out in accordance with—
- (a) the approved landscaping scheme and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice; and
  - (b) any implementation timetables approved under sub-paragraph (1).
- (4) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of 5 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.

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

7.—(1) No stage of the authorised development may be commenced until details of the proposed means of enclosure for that stage (which must be in accordance with the details described in the environmental statement) have been submitted to and agreed in writing by the relevant planning authority.

(2) The means of enclosure agreed under sub-paragraph (1) must be erected before the commissioning of the relevant stage of the authorised development.

#### **Archaeology**

8.—(1) The authorised development must not be commenced until a written scheme for the investigation of areas of archaeological interest as identified in chapter 11 (cultural heritage and archaeology) of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The scheme approved under sub-paragraph (1) must identify—

- (a) areas where a watching brief is required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found; and
- (b) areas where palaeo-environmental sampling must be carried out before the commencement of any of the authorised development to establish the presence and extent of any surviving peat deposits and the measures to be taken where any such deposits are found.

(3) Any archaeological works or watching brief carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme and in consultation with the archaeological planning section of Glamorgan-Gwent Archaeological Trust Limited.

### **Habitat management plan**

**9.**—(1) No stage of the authorised development may be commenced until a written habitat management plan for that stage, reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, has been submitted to and approved by the relevant planning authority.

(2) The habitat management plan must include an implementation timetable and must be carried out as approved by the relevant planning authority.

### **Code of construction practice**

**10.**—(1) No stage of the authorised development may be commenced until a code of construction practice for that stage has been submitted to and approved by the relevant planning authority.

(2) The code of construction practice, which must specify measures to mitigate the impacts of construction works, must be substantially in accordance with the outline code of construction practice set out in appendix 15.1 of volume 3 of the environmental statement and must incorporate the following plans—

- (a) a water management plan;
- (b) a pollution prevention plan; and
- (c) a dust management plan.

(3) The dust management plan required under sub-paragraph (2)(c) must include details of the mechanisms by which failures of dust controls will be investigated and appropriate mitigation or remedial works will be implemented.

(4) All construction works for the authorised development must be carried out in accordance with the approved code of construction practice for that stage, including any plans approved as part of it.

### **Approval and implementation of noise management plan, etc.**

**11.**—(1) No stage of the authorised development may be commenced until the following plans to minimise the impacts of construction works for that stage have been submitted to and approved by the relevant planning authority—

- (a) a noise management plan, which must be substantially in accordance with section 8.7 of the environmental statement and the outline plan at appendix 15.1.5 of that document;
- (b) a construction traffic management plan, which must be substantially in accordance with section 10.6 of the environmental statement and the outline plan at appendix 15.1.6 of that document;
- (c) a waste management plan, which must be substantially in accordance with section 15.10 of the environmental statement and the outline plan at appendix 15.1.4 of that document; and
- (d) an emergency response and flood management plan, which must be substantially in accordance with section 8.7 of the environmental statement and the outline plan at appendix 15.1.7 of that document.

(2) The noise management plan required under sub-paragraph (1)(a) must include—

- (a) a piling method statement;
- (b) a construction vibration risk assessment; and
- (c) details of the mechanisms by which failures of noise controls will be investigated and appropriate mitigation or remedial works will be implemented.



(3) The relevant planning authority must consult Royal Mail Group Limited before approving the construction traffic management plan and must have regard to any response provided by Royal Mail Group Limited.

(4) Construction works for the authorised development must be carried out in accordance with the approved plans for that stage referred to in sub-paragraph (1).

### **External lighting**

**12.**—(1) Not less than 3 months before commissioning any stage of the authorised development, the undertaker must submit to the relevant planning authority written details of all external lighting to be installed at that stage of the authorised development.

(2) The details must be in accordance with the environmental statement and the design and access statement and must include details of the direction and levels of lighting.

(3) The relevant stage of the authorised development must not be brought into operation until the details submitted under sub-paragraph (1) have been approved by the relevant planning authority and the approved external lighting scheme has been installed.

(4) The approved lighting scheme must be retained for the duration of the operation of the relevant stage of the authorised development.

### **Construction hours**

**13.** Construction works for the authorised development must not take place—

- (a) outside the hours of—
  - (i) 7 a.m. to 7 p.m. on Monday to Friday; and
  - (ii) 7 a.m. to 1 p.m. on Saturdays; or
- (b) at any time on Sundays and public holidays,

except with the prior written approval of the relevant planning authority.

### **Control of noise during operational phase**

**14.**—(1) The undertaker must not commence commissioning of any stage of the authorised development until a written scheme for the management of noise generated by the operation of that stage of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme to be submitted and approved under sub-paragraph (1) must be substantially in accordance with section 8.7 of the environmental statement and must include details of—

- (a) the noise attenuation measures to be taken to minimise operational noise, including any noise limits;
- (b) noise monitoring requirements including the location of monitoring equipment; and
- (c) the measures to be taken, including timescales, to address any noise issues identified.

(3) The noise management scheme must be implemented as approved and maintained for the duration of the operation of the relevant stage of the authorised development.

### **Surface and foul water drainage**

**15.**—(1) No stage of the authorised development may be commenced until written details of the surface and foul water drainage system for that stage have been submitted to and approved by the relevant planning authority.

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(2) The surface and foul water drainage system for the relevant stage of the authorised development must be constructed in accordance with the approved details.

### **Aviation safety**

**16.** The undertaker must install on any chimney stack forming part of the authorised development aviation warning lighting with such shape, colour and character as specified in guidance issued by the Civil Aviation Authority.

### **Air quality monitoring**

**17.—(1)** Not less than 12 months before the commissioning of any stage of the authorised development, a scheme for the monitoring of ambient concentrations of nitrogen dioxide in the area must be submitted to and approved by the relevant planning authority.

(2) The scheme to be submitted under sub-paragraph (1) must contain details of—

- (a) the locations at which monitoring will take place;
- (b) the monitoring equipment and methods to be used;
- (c) the frequency and duration of monitoring; and
- (d) the procedure for reporting the result of the monitoring.

(3) The air quality monitoring scheme must be implemented as approved for the relevant stage of the authorised development.

### **Contaminated land and groundwater**

**18.—(1)** No stage of the authorised development may be commenced until a written scheme for that stage to deal with the contamination of any land, including groundwater, which is likely to cause harm to persons, the environment or pollution of controlled waters has been submitted to and approved by the relevant planning authority in consultation with the Natural Resources Body for Wales.

(2) The scheme must include an investigation and risk assessment report, prepared by a competent person in accordance with the guidance document, which must contain—

- (a) an investigation of the extent, scale and nature of contamination;
- (b) an assessment of the potential risks to human health, the environment and controlled waters;
- (c) a piling method risk assessment; and
- (d) a remediation scheme to bring the site to a condition suitable for the intended use by removing any unacceptable risks to human health, the environment and controlled waters, which must contain—
  - (i) details of remediation works to be undertaken;
  - (ii) proposed remediation objectives and remediation criteria; and
  - (iii) site management procedures.

(3) The undertaker must carry out the remediation works in accordance with the approved scheme.

(4) Construction of the authorised development must not commence until a verification report, which demonstrates the effectiveness of the approved remediation works (if required) carried out in accordance with sub-paragraph (3), has been submitted to and agreed in writing with the relevant planning authority.

(5) If contaminated land not previously identified is found during the construction of the authorised development, no further works for the authorised development may be carried out until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contaminated land is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(6) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph (5) must be carried out in accordance with the approved scheme.

(7) In this Requirement—

“controlled waters” has the meaning given in Part 3 of the Water Resources Act 1991(29);

“guidance document” means Land Contamination: A Guide for Developers (Welsh Local Government Association and the Environment Agency Wales, 2006(30)).

### **Construction compound**

19.—(1) No stage of the authorised development may be commenced until details for that stage of the size, layout and location of temporary buildings and structures forming Work No. 1B have been submitted to and approved by the relevant planning authority.

(2) The temporary buildings and structures forming Work No. 1B must be installed in accordance with the approved details.

## SCHEDULE 3

Article 12(3)

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

#### **Compensation enactments modified**

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with 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.

#### **Land Compensation Act 1973 modified**

2.—(1) Without limiting paragraph 1, the Land Compensation Act 1973(31) has effect subject to the modifications set out in sub-paragraphs (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) omit “land is acquired or taken” and substitute “a right over land is purchased”; and
- (b) omit “acquired or taken from him” and substitute “over which the right is exercisable”.

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(29) See section 104(1).

(30) The guide is available at this link: <http://www.merthyr.gov.uk/media/1446/land-contamination-a-guide-for-developers.pdf>.

(31) 1973 c.26.

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(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) omit “part” in paragraphs (a) and (b) and substitute “a right over land consisting”;
- (b) omit “severance” and substitute “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) omit “part proposed” and substitute “right proposed”; and
- (d) omit “part is” and substitute “right is”.

### **1965 Act modified**

**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 as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land must be read (according to the requirements of the particular context) as referring to, or as including, references to—

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

(2) Without limiting 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.** Omit section 7 of the 1965 Act (measure of compensation in case of severance) and substitute 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 is depreciated by the acquisition of the right, 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.** Omit section 8 of the 1965 Act (other provisions as to divided land) and substitute the following section—

“8.—(1) Where in consequence of the service on a person under section 5 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 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 without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

in relation to that person, the Order ceases to authorise the purchase of the right and 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) 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), 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.

(4) In this section, "Order" means the Port Talbot Steelworks Generating Station Order 2015."

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) (refusal to convey, failure to make title, etc.);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of that Act<sup>(32)</sup> are modified correspondingly.

8. Section 20 of the 1965 Act<sup>(33)</sup> (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 in question.

9. Section 22 of the 1965 Act (interests omitted from purchase) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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<sup>(32)</sup> Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15) and by paragraph 28 of Schedule 13 and Part 3 of Schedule 23 to that Act.

<sup>(33)</sup> Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and paragraph 70 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009.

## SCHEDULE 4

Article 21

## PROTECTIVE PROVISIONS

## PART 1

## PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED, ETC.

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Network Rail and, where paragraph 15 applies, any other person on whom rights or obligations are conferred or imposed by that paragraph.

2. In this Part—

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

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

“network licence” means the network licence, as amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers in section 8 of the Railways Act 1993<sup>(34)</sup>;

“Network Rail” means—

- (a) Network Rail Infrastructure Limited<sup>(35)</sup> (company number 2904587); and
- (b) any associated company of Network Rail Infrastructure Limited that holds property for railway purposes,

and for the purpose of paragraph (b) “associated company” means any company that is (within the meaning of section 1159 of the Companies Act 2006<sup>(36)</sup>)—

- (i) the holding company of Network Rail Infrastructure Limited;
- (ii) a subsidiary of Network Rail Infrastructure Limited; or
- (iii) another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993<sup>(37)</sup>) or station lease;

“railway property” means—

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

<sup>(34)</sup> 1993 c.43. Section 8 was amended by paragraph 4 of Schedule 17 and Part 4 of Schedule 31 to the Transport Act 2000 (c.38), paragraphs 3 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c.20), paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to the Railways Act 2005 (c.14) and Part 1 of Schedule 1 to the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682).

<sup>(35)</sup> The registered office of Network Rail Infrastructure Limited is 1 Eversholt Street, London NW1 2DN.

<sup>(36)</sup> 2006 c.46.

<sup>(37)</sup> “Access agreement” is defined in section 83. The definition was amended by section 230 of the Transport Act 2000.

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

**3.—**(1) Where under this Part Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

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

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

**4.—**(1) The undertaker must not exercise the powers conferred by—

- (a) article 11 (authority to survey and investigate land);
- (b) article 12 (compulsory acquisition of rights);
- (c) article 16 (acquisition of subsoil or airspace only);
- (d) article 17 (private rights);
- (e) article 18 (statutory undertakers); or
- (f) section 11(3) of the 1965 Act (powers of entry) as applied by this Order,

in respect of any railway property unless the exercise of the powers is with the consent of Network Rail.

(2) The undertaker must not in exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic code communications operators: preliminary notices) of the 1990 Act<sup>(38)</sup> or article 18 in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not in exercise of the powers conferred by this Order acquire or use, or acquire new rights over, any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, consent must not be unreasonably withheld but may be given subject to reasonable conditions.

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which the plans have been supplied to Network Rail the engineer has not intimated disapproval of the plans and the grounds of disapproval—

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<sup>(38)</sup> Section 272 was amended by paragraph 103 of Schedule 17 to the Communications Act 2003 (c.21).



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

(3) If by the end of the period of 28 days beginning with the date on which written notice was served on the engineer under sub-paragraph (2) Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work that in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail, then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the undertaker.

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

- (a) such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, at the expense of the undertaker in either case, with all reasonable dispatch; and
- (b) the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

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

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

(3) Nothing in this Part imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**7.** The undertaker must—

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

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

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

(2) If Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(3) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work that in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail, then, if the undertaker decides that part of the specified work is to be constructed,—

- (a) Network Rail must assume construction of that part of the specified work; and
- (b) the undertaker must, despite any approval of a specified work under paragraph 5(2), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which Network Rail may suffer by reason of the execution by Network Rail of that specified work.

(4) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

**10.** The undertaker must pay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may

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be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any special traffic working resulting from any speed restrictions that may, in the opinion of the engineer, need to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services that may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.—(1)** In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised development, where such interference is of a level that adversely affects the safe operation of Network Rail’s apparatus;

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) that are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that the EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(2) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus that may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(2)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to paragraph (a).

(5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but Network Rail may, in its reasonable discretion, select the means of prevention and the method of their execution, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If, at any time before the commencement of regular operations of the authorised development and despite any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI, the undertaker must immediately on receipt of notification by Network Rail of the EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing the EMI until all measures necessary have been taken to remedy the EMI by way of modification to the source of the EMI or

(in the circumstances, and subject to the consent specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of the EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of the EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or the EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraph (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a), any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that sub-paragraph.

(11) In relation to any dispute arising under this paragraph, the reference in article 25 (arbitration) to the Institution of Civil Engineers must be read as a reference to the Institution of Engineering and Technology.

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

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

**14.** Any additional expenses that Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that at least 56 days' prior notice of the commencement of the alteration, reconstruction or maintenance has been given to the undertaker, be paid by the undertaker to Network Rail.

**15.—(1)** The undertaker must—

- (a) pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part that may be occasioned to or reasonably incurred by Network Rail—

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- (i) by reason of the construction or maintenance of a specified work or the failure of such a work; or
  - (ii) by reason of any act or omission of the undertaker or of any person in its employ, its contractors or others whilst engaged on a specified work; and
- (b) indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.
- (2) The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer does not (if it was done without negligence on the part of Network Rail or of any person in its employ, its contractors or agents) excuse the undertaker from any liability under sub-paragraph (1).
- (3) Network Rail must give the undertaker reasonable notice of any such claim or demand, and no settlement or compromise of such a claim or demand may be made without the prior consent of the undertaker.
- (4) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.
- (5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (4) that relates to the relevant costs of that train operator.
- (6) The obligation under sub-paragraph (4) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (5).
- (7) In this paragraph—
- “relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1);
  - “train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (including any claim relating to those relevant costs).

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

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

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and

- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

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

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 7 (consent to transfer benefit of Order), and the notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

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

**21.** The undertaker must, no later than 28 days from the date that the plans submitted to the Secretary of State are certified in accordance with article 22 (certification of plans, etc.), provide a set of those plans to Network Rail in the form of a computer disc with read-only memory.

## PART 2

### PROTECTION OF WESTERN POWER DISTRIBUTION (SOUTH WALES) PLC

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

**2.** In this Part—

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

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

“apparatus” means electrical plant or electric line (in both cases, as defined in the Electricity Act 1989(39)), belonging to or maintained by WPD;

“associated company” means any company that is—

- (a) a holding company of WPD;
- (b) a subsidiary of WPD; or
- (c) another subsidiary of the holding company of WPD,

and “holding company” and “subsidiary” have the meanings given in section 1159 of the Companies Act 2006;

“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 on land;

“undertaker” has the meaning given in article 2(1) except that, for the purposes of this Part, it does not include WPD or an associated company of WPD that has the benefit of this Order under a transfer or grant made under article 7 (consent to transfer benefit of Order);

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(39) “Electrical plant” and “electric line” are defined in section 64(1). The definition of “electrical plant” was amended by paragraph 38 of Schedule 6 to the Utilities Act 2000 (c.27).



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“WPD” means Western Power Distribution (South Wales) plc<sup>(40)</sup> (company number 02366985).

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

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

(2) The undertaker must not exercise the powers in this Order to carry out the substation works unless the exercise of such powers is with the consent of WPD.

(3) Where WPD is asked to give its consent under sub-paragraph (2), consent must not be unreasonably withheld, but may be given subject to reasonable conditions.

5.—(1) If, in exercise of the powers conferred by this Order, the undertaker acquires any interest in land in which any apparatus is placed—

(a) that apparatus must not be removed under this Part; and

(b) 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 (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 25 (arbitration), and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (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 this Part.

6.—(1) Not less than 28 days before commencing the execution of any works in, on or under any land acquired, held, appropriated or used for the purposes of the authorised development that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to WPD a plan, section and description of the works to be executed. To avoid doubt, if any works referred to require any diversion or require WPD to obtain any alternative rights, the undertaker must give WPD sufficient notice to obtain any such alternative rights and must not commence works of the type described unless or until any such alternative rights have been obtained.

(2) The 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 by WPD for the alteration or otherwise for the protection of the apparatus or for securing access to it, and WPD may watch and inspect the execution of the works.

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<sup>(40)</sup> The registered office of Western Power Distribution (South Wales) plc is Avonbank, Feeder Road, Bristol BS2 0TB.



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

(4) If WPD, 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, paragraph 5 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph 5(2) of that paragraph.

(5) Nothing in this paragraph prevents 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 (3), before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and if this is done, this paragraph applies 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 WPD notice as soon as is reasonably practicable and a plan, section and description of the works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) insofar as is reasonably practicable in the circumstances.

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

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

(3) If in accordance with this Part—

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

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 25 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to WPD by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a 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 (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 that represents that benefit.

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8. The undertaker must indemnify WPD and keep WPD indemnified in respect of any direct losses, costs, claims or liabilities arising out of, or as a consequence of, the works authorised by this Order and anything done under this Part.

9. Any difference or dispute arising between the undertaker and WPD under this Part must, unless otherwise agreed in writing between the undertaker and WPD, be determined by arbitration in accordance with article 25.

## PART 3

### PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

#### Part to have effect unless otherwise agreed

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

#### Interpretation

2. In this Part—

“acceptable insurance” means third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £10 millions per occurrence or series of occurrences arising out of a single event arranged with underwriters whose security or credit rating is not lower than—

- (a) A-, if the rating is assigned by Standard & Poor’s Ratings Group; or
- (b) A3, if the rating is assigned by Moody’s Investors Services Inc.;

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

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

“authorised development” includes the use and maintenance of the authorised development;

“commence” and “commencement” have the meaning given in paragraph 1 of Schedule 2 (Requirements);

“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 on land;

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

“National Grid” means National Grid Electricity Transmission plc<sup>(41)</sup> (company number 2366977);

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

“specified work” means so much the authorised development that will or may be situated within 15 metres (measured in any direction) of, or that may affect, any apparatus.

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(41) The registered office of National Grid Electricity Transmission plc is 1-3 Strand, London WC2N 5EH.

## **Application**

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by Part 3 of the 1991 Act.

## **Acquisition of land**

4.—(1) Despite any provision of this Order or anything shown on the land plans or contained in the book of reference, 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) Where there is any inconsistency or duplication between the provisions of this Part relating to the relocation or removal of apparatus (including the payment of costs and expenses relating to such relocation or removal) and the provisions of any existing easement, right, agreement or licence granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus, the provisions of this Part prevail.

## **Removal of apparatus**

5.—(1) If, in accordance with the agreement reached under paragraph 4 or in any other authorised manner, the undertaker acquires an interest in any land in which any apparatus is placed—

(a) the apparatus must not be removed under this Part; and

(b) any right of National Grid to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works 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 the land, it must give to National Grid at least 56 days' advance written notice of that requirement, together with a plan of the work proposed and of the proposed position of the alternative apparatus to be provided or constructed; and in that case (or if, in consequence of the exercise of any power conferred by this Order, National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 6(1)) the necessary facilities and rights for—

(a) the construction of alternative apparatus in other land of the undertaker; and

(b) subsequently for the maintenance of that apparatus.

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

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

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the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part.

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

6.—(1) Where in accordance with this Part 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 must be granted on 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 under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject—

- (a) the matter must be referred to arbitration (in accordance with article 25 (arbitration)); and
- (b) the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of National Grid**

7.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 5(2), the undertaker must submit a plan to National Grid and seek from National Grid details of the apparatus belonging to or maintained by National Grid.

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

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

(3) In relation to any works that 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 2 or more electricity towers, the plan to be submitted under sub-paragraph (1) must be detailed, including (in addition to the matters set out in sub-paragraph (2))—

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

- (g) written details of the operations and maintenance regime for the cable, including frequency and method of access;
  - (h) assessment of earth rise potential, if reasonably required by National Grid’s engineers;
  - (i) evidence that trench-bearing capacity will 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) 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)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
  - (b) must not be unreasonably withheld.
- (6) In relation to any works to which sub-paragraph (1) or (3) applies, National Grid may require such modifications to be made to the plan 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) or (3) must be executed only in accordance with the plan submitted, as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable conditions, modifications and requirements as may be made in accordance with sub-paragraph (5), (6), (8) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and National Grid is entitled to watch and inspect the execution of the works.
- (8) Where National Grid require any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature)—
- (a) the protective works must be carried out to the undertaker’s satisfaction before the commencement of any authorised development (or any relevant part of it); and
  - (b) National Grid must give at least 56 days’ notice of the protective works from the date of submission of a plan in accordance with sub-paragraph (1) (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 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).
- (10) Nothing in this paragraph prevents 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 this having been done, the provisions of this paragraph apply to and in respect of the new plan.
- (11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act(42); but in that case the undertaker must—
- (a) give to National Grid notice as soon as is reasonably practicable and a plan of the works;
  - (b) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
  - (c) comply with sub-paragraph (12).
- (12) The undertaker must at all times when carrying out any works authorised by this Order comply with—

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(42) “Emergency works” is defined in section 52(1).

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- (a) National Grid’s policy Development near overhead lines(43);
- (b) the Energy Networks Association’s Technical Specification 43-8 Overhead Line Clearances(44); and
- (c) the Health and Safety Executive’s guidance note GS6 Avoiding Danger from Overhead Power Lines(45).

## Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus, or the construction of any new apparatus, that may be required in consequence of the execution of any works referred to in this Part, including without limitation any costs reasonably incurred or compensation properly paid in connection with—

- (a) the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation, in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 5(3), all costs incurred as a result of such action;
- (b) the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any works referred to in this Part.

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

(3) If in accordance with this Part—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 25 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount that apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) must be reduced by the amount of that excess except where it is not

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(43) The document is available at this link: <http://www.nationalgrid.com/NR/rdoonlyres/4DD2D3FF-B973-4F3C-A8C3-CDB640526660/45082/Developmentnearoverheadlines.pdf>.

(44) The document is available at this link: [http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/TR040005/2.%20Post-Submission/Section%20127%20Application/130402\\_TR040005\\_WPD\\_Addendum\\_Appendix\\_9.pdf](http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/TR040005/2.%20Post-Submission/Section%20127%20Application/130402_TR040005_WPD_Addendum_Appendix_9.pdf).

(45) The guidance note is available at this link: <http://www.hse.gov.uk/pubns/g6.htm>.



possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth, in which case the full cost must 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 must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

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

## **Indemnity**

- 9.—(1) Subject to sub-paragraphs (2) and (3), if, by reason or in consequence of—
- (a) the construction of any works authorised by this Part;
  - (b) the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker; or
  - (c) any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of those 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 must—

- (d) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (e) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalties 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 mentioned.

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

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of 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.

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

### **Insurance**

**10.**—(1) The undertaker must not—

- (a) commence, or permit the commencement of, construction of the authorised development on any land owned by National Grid or in respect of which National Grid has an easement, a wayleave for apparatus or any other interest; or
- (b) carry out any specified work,

unless National Grid—

- (c) is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has effected acceptable insurance and provided evidence to National Grid that it will maintain acceptable insurance during the construction of the authorised development; and
- (d) has confirmed its satisfaction in writing to the undertaker (such confirmation not to be unreasonably withheld or delayed).

(2) If the undertaker fails to comply with sub-paragraph (1), National Grid may seek injunctive relief (or any other equitable remedy) in a court of competent jurisdiction, and the undertaker irrevocably and unconditionally waives any right of objection in relation to National Grid's right to seek such relief or remedy.

(3) The undertaker must maintain acceptable insurance during the construction of the authorised development.

### **Enactments and agreements**

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

### **Co-operation**

**12.** National Grid and the undertaker must each use their best endeavours to co-operate with the other party on the timing and method of execution of any works carried out under this Order in the interests of safety and the efficient and economic execution of the authorised development, taking into account the need to ensure the safe and efficient operation of the other party's operations.

### **Access**

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

### **Arbitration**

**14.** Any difference or dispute arising between the undertaker and National Grid under this Part must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 25.



## PART 4

### PROTECTION OF DŴR CYMRU CYFYNGEDIG

#### Part to have effect unless otherwise agreed

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

#### Interpretation

2. In this Part—

“acceptable insurance” means a public liability or third party liability insurance policy with a reputable insurer, available in the market on commercially reasonable terms having regard, amongst other matters, to premiums required and the policy terms obtainable, with a level of insurance cover to be agreed between the undertaker and DCC;

“accessories”—

- (a) has the same meaning as in section 219 of the Water Industry Act 1991<sup>(46)</sup>; and
- (b) includes any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and that is part of a structure designed to receive rainwater or surface water except a public sewer or a natural watercourse;

“clearance area” means the area of land—

- (a) within 3 metres either side of the centre line of a public sewer or public water main that is less than 300 millimetres in diameter;
- (b) within 6 metres either side of a public sewer or public water main that is 300 millimetres in diameter or more; and
- (c) within 10 metres either side of the centre line of a gravity sewer;

“DCC” means Dŵr Cymru Cyfyngedig<sup>(47)</sup> (company number 2366777) or its properly authorised agents or sub-contractors;

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

“draft specification” means a detailed plan, cross-section and description of the works to be prepared by the undertaker including, without limitation,—

- (a) a method statement and risk assessment setting out the intention in respect of the works, construction methods and programmes and the position of the affected DCC apparatus and intended works; and
- (b) a statement that, to the best of the undertaker’s knowledge, the undertaker having used all reasonable care and skill to plan the works, the works will not cause damage to DCC apparatus;

“functions” has the same meaning as in section 219 of the Water Industry Act 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 on land;

<sup>(46)</sup> The definition of “accessories” was amended by paragraph 110 of Schedule 17 to the Communications Act 2003.

<sup>(47)</sup> The registered office of Dŵr Cymru Cyfyngedig is Pentwyn Road, Nelson, Treharris, Mid Glamorgan CF46 6LY.

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“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 to the works.

### **Other enactments, etc. unaffected**

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

### **DCC apparatus not to be acquired, etc. except by agreement**

4.—(1) Despite any provision of this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not—

- (a) acquire any DCC apparatus or its accessories;
- (b) override or extinguish any easement or other interest of DCC;
- (c) acquire any land or other interest of DCC identified in the book of reference; or
- (d) create any new rights over such land or other interest,

otherwise than by agreement with DCC in accordance with this Part.

(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DCC’s rights to access DCC apparatus or accessories, subject to the undertaker giving DCC at least 28 days’ notice of such interference.

(3) This paragraph is subject to paragraphs 8 and 9.

### **Precedence of Water Industry Act 1991**

5. Nothing in this Order releases the undertaker from any requirement to comply with any provision of the Water Industry Act 1991 in relation to any use of, any connection with, or any actions or omissions that in any way affect, DCC apparatus.

### **Protection of DCC apparatus**

6.—(1) Not less than 28 days before commencing the execution of any works that—

- (a) are within the clearance area; or
- (b) will, or could reasonably foreseeably affect, any DCC apparatus, the removal or alteration of which has not been required by the undertaker under section 185 of the Water Industry Act 1991<sup>(48)</sup>,

the undertaker must submit to DCC written notice together with a draft specification.

(2) DCC must examine the draft specification submitted under sub-paragraph (1) and give its written approval or propose amendments (neither to be unreasonably withheld or delayed) within 28 days from the date of receipt.

(3) Where DCC proposes amendments to the draft specification, the process in sub-paragraph (2) must be repeated if the amendments are not accepted by the undertaker.

(4) To avoid doubt, DCC’s proposed amendments may—

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<sup>(48)</sup> Section 185 was amended by section 36 of the Water Act 2003. A further amendment was made by section 20 of the Water Act 2014 (c.21), but that amendment is not yet in force.

- (a) include 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; and
  - (b) vary the proposed commencement date or anticipated completion date of the works.
- (5) Where the draft specification is approved under sub-paragraph (2) or the undertaker accepts DCC's proposed amendments—
- (a) the draft specification (with any accepted amendments) becomes the specification;
  - (b) the works must be executed only in accordance with the specification (with any accepted amendments); and
  - (c) DCC may watch and inspect the execution of the works.
- (6) Nothing in this paragraph prevents the undertaker from submitting at any time, but in no case less than 28 days before commencing the execution of any works, a new draft specification in place of the draft specification previously submitted, and this having been done, the provisions of this paragraph apply to and in respect of the new draft specification.
- (7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works carried out in compliance with paragraph 9, but in that case the undertaker must submit to DCC a draft specification as soon as is reasonably practicable subsequently, and sub-paragraphs (2) to (5) must be complied with insofar as is reasonably practicable in the circumstances.
- (8) DCC may opt to carry out any temporary or protective works specified under sub-paragraphs (2) to (4) to DCC apparatus itself; and if DCC opts to do so, DCC must—
- (a) agree the scope and timings of the works with the undertaker (and the undertaker must not unreasonably withhold or delay its agreement);
  - (b) provide an invoice together with supporting evidence of the estimated costs of the works on the basis of which it must agree with undertaker the reasonable costs of the works to be paid by the undertaker;
  - (c) as soon as reasonably practicable following agreement and payment of the costs, carry out and complete the works; and
  - (d) notify the undertaker immediately in writing on completion of the temporary or protective works.
- (9) Only contractors that satisfy DCC's reasonable health and safety requirements may make openings into, or connections with, or carry out any works on or within, any public sewer or drain vested in DCC, unless otherwise agreed by DCC.
- (10) Only DCC may make openings into, or connections with, or carry out any works on or within, any public water main vested in DCC, unless otherwise agreed by DCC.
- (11) Where DCC apparatus will be affected by the works, the undertaker must—
- (a) determine the exact location of DCC apparatus before any works are carried out; and
  - (b) contact DCC where trial holes are required.
- (12) Any affected DCC apparatus that is no longer required by DCC but is not removed must be transferred to the undertaker by way of a deed of transfer from DCC at the undertaker's expense and on such terms as DCC reasonably requires.

### **Suspension of works**

7.—(1) DCC may instruct the undertaker to suspend the works if in DCC's reasonable opinion the actions of the undertaker, or those of its contractors or sub-contractors in carrying out the works, have caused or are likely to cause damage to—

- (a) any DCC apparatus; or

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- (b) the environment, arising as a result of damage to DCC apparatus.
- (2) If DCC gives such an instruction—
- (a) the undertaker must—
    - (i) procure that it and its contractors and sub-contractors immediately suspend or cease the works, having due regard to health and safety factors; and
    - (ii) discuss and agree with DCC the remedial actions required before resuming the works;
  - (b) the undertaker and DCC must act reasonably and without delay in discussing and agreeing any remedial actions required before resuming the works;
  - (c) DCC must submit to the undertaker within 3 days after giving the instruction a written notice specifying the reasons for requiring the works to be suspended;
  - (d) in the event that DCC fails to submit the written notice mentioned in paragraph (c) within 5 days after giving the instruction, the instruction is void and the undertaker may recommence the works;
  - (e) DCC must—
    - (i) commence, carry out and complete any remedial works agreed under this sub-paragraph as soon as reasonably practicable; and
    - (ii) give the undertaker notice immediately on completion of the remedial works; and
  - (f) on receipt of the notice mentioned to in paragraph (e)(ii), the undertaker may resume the works.
- (3) The undertaker must pay to DCC the reasonable costs of all remedial works undertaken in accordance with this paragraph.

### **Co-operation**

**8.** If either the undertaker or DCC (the “party” or together the “parties”) wishes to take any action that would affect the ability of—

- (a) the undertaker to carry out the authorised development; or
- (b) DCC to carry out its functions,

the parties must use reasonable endeavours to co-operate with one another in order to align work streams so to minimise or avoid disruption to the other party or its works.

### **Emergency works**

**9.—(1)** The undertaker may carry out emergency works provided that it first notifies DCC of the proposed emergency works.

(2) DCC may at all times carry out emergency works in relation to DCC apparatus within the Order limits in accordance with Part 2 (other rights of entry and related powers) of Schedule 6 to the Water Industry Act 1991.

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

(4) To avoid doubt, if DCC suffers any loss, cost or damage as a result of emergency action taken by the undertaker without prior notification as provided for in sub-paragraph (1), the indemnity in paragraph 11 applies.

## **Insurance**

**10.**—(1) The undertaker must not commence any works under paragraph 6(1) unless the undertaker has effected acceptable insurance.

(2) The undertaker must maintain acceptable insurance during the construction of the authorised development.

## **Indemnity**

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

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

(2) The indemnity in sub-paragraph (1) includes, without limitation, the costs reasonably incurred by DCC in making good damage to DCC apparatus or restoring an interruption in the supply provided by DCC.

(3) Nothing in sub-paragraph (1) 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 DCC, its officers, servants, contractors or agents.

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

(5) 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 in sub-paragraph (1) applies and, if requested to do so by the undertaker, DCC must provide an explanation of how the claim has been minimised.

(6) The undertaker is liable under this paragraph only for claims reasonably incurred by DCC.

## **Arbitration**

**12.**—(1) Subject to sub-paragraph (2), differences or disputes arising between the undertaker and DCC under this Part must, unless otherwise agreed in writing, be determined by arbitration in accordance with article 25 (arbitration).

(2) Article 25 does not apply where DCC uses a warrant of entry in accordance with the Water Industry Act 1991.

## SCHEDULE 5

Article 24(2)

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

#### Interpretation

**1.** In this Schedule—

“appeal parties” means the relevant planning authority, the undertaker and (where relevant) every requirement consultee;

“business day” means a day other than a Saturday, a Sunday or a public holiday in Wales;

“requirement consultee” means a body named in a Requirement as a body to be consulted by the relevant planning authority in discharging the Requirement.

#### Applications made under Requirements

**2.—(1)** Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement (including consent, agreement or approval in respect of part of a Requirement), the relevant planning authority must give notice to the undertaker of its decision on the application before the end of the decision period.

**(2)** For the purposes of sub-paragraph **(1)**, the decision period is—

**(a)** in the case of Requirement 4 (detailed design)—

**(i)** where no further information is requested under paragraph 3, 16 weeks from the day following the day on which the application is received by the relevant planning authority;

**(ii)** where further information is requested under paragraph 3, 16 weeks from the day following the day on which the further information is received by the relevant planning authority; or

**(iii)** such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period referred to in paragraph **(b)(i)** or **(b)(ii)**; and

**(b)** in the case of any other Requirement—

**(i)** where no further information is requested under paragraph 3, 8 weeks from the day following the day on which the application is received by the relevant planning authority;

**(ii)** where further information is requested under paragraph 3, 8 weeks from the day following the day on which the further information is received by the relevant planning authority; or

**(iii)** such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period referred to in sub-paragraph **(i)** or **(ii)**.

#### Further information

**3.—(1)** In relation to any application referred to in paragraph **2(1)**, the relevant planning authority may request such further information from the undertaker as is necessary to enable it to consider the application.

**(2)** If the relevant planning authority considers that further information is necessary, the relevant planning authority must, within 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.

(3) If the requirement specifies that consultation with a requirement consultee is required, the relevant planning authority must—

- (a) issue the consultation to the requirement consultee within 2 business days of receipt of the application; and
- (b) notify the undertaker in writing specifying any further information requested by the requirement consultee within 2 business days of receipt of such a request and in any event within 21 business days of receipt of the application.

## Appeals

4.—(1) The undertaker may appeal if—

- (a) the relevant planning authority—
  - (i) refuses an application for any consent, agreement or approval required by a Requirement;
  - (ii) does not determine the application within the decision period set out in paragraph 2; or
  - (iii) grants the application subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 3, the undertaker considers that the whole or part of the specified further information requested by the relevant planning authority is not necessary to determine the application; or
- (c) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the further information provided is inadequate and requests additional information that the undertaker considers is not necessary to determine the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination or, where no determination has been made, end of the decision period set out in paragraph 2;
- (b) the undertaker must—
  - (i) submit a copy of the application submitted to the relevant planning authority and any supporting documentation that the undertaker wishes to provide (together, the “appeal documentation”) to the Secretary of State; and
  - (ii) provide on the same day copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must—
  - (i) appoint a person to determine the appeal (the “appointed person”), who must be a qualified town planner with at least 10 years’ experience (and may but need not be a person appointed under paragraph 1 of Schedule 6 to the 1990 Act<sup>(49)</sup>); and
  - (ii) notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person’s attention must be sent;
- (d) the relevant planning authority and any requirement consultee—

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<sup>(49)</sup> Paragraph 1 was amended by paragraph 44 of Schedule 22 to the Environment Act 1995, section 198 of the Planning Act 2008 and paragraph 9 of Schedule 2 to the Growth and Infrastructure Act 2013.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (i) may submit written representations in respect of the appeal to the appointed person within 20 business days beginning with the day following the day on which the appeal parties are notified of the appointment of the appointed person; and
  - (ii) must ensure that copies of any written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
  - (e) the appeal parties may make any counter-submissions to the appointed person within 20 business days of receipt of written representations made under paragraph (d); and
  - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.
- (3) The appointment of a person under sub-paragraph (2)(c)(i) may be made by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (4) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as is practicable notify the appeal parties in writing specifying the further information required.
- (5) The undertaker must provide the further information specified under sub-paragraph (4) to the appointed person, the relevant planning authority and any requirement consultee by the date specified by the appointed person (the “specified date”).
- (6) On or before the specified date, the appointed person must notify the appeal parties of the revised timetable for the appeal, which must require submission of written representations to the appointed person within 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)(d) to (f).
- (7) 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 the appointed person in the first instance.
- (8) The appointed person must decide an appeal taking into account only such written representations as have been submitted within the relevant time limits.
- (9) The appointed person may decide an appeal even though no written representations have been submitted within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.
- (10) The decision of the appointed person on an appeal is 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.
- (11) If a consent, agreement or approval is given by the appointed person pursuant to this Schedule, it is deemed to be a consent, agreement or approval for the purpose of Schedule 2 (Requirements) as if it had been given by the relevant planning authority.
- (12) 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) does not affect or invalidate the appointed person’s determination.
- (13) Except where a direction is given under sub-paragraph (14) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be paid by the undertaker.
- (14) 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.



(15) In considering whether to give a direction under sub-paragraph (14) and the terms on which to give it, the appointed person must have regard to Welsh Government Circular NAFWC 07/2003 Planning (and Analogous) Appeals and Call-in Procedures<sup>(50)</sup> or any circular or guidance which may from time to time replace it.

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### EXPLANATORY NOTE

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

This Order grants Tata Steel UK Limited development consent for a gas-fired generating station on the site of the Port Talbot steelworks. The Order provides for the decommissioning of the existing generating station on the site. The Order authorises the extinguishing of rights over land and the creation and compulsory acquisition of new rights over land for the purposes of the development.

A copy of the plans, book of reference and other documents mentioned in this Order and certified in accordance with article 22 may be inspected free of charge during working hours at the offices of Neath Port Talbot County Borough Council, Civic Centre, Port Talbot SA13 1PJ.

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<sup>(50)</sup> The circular is available at the following link: <http://gov.wales/about/foi/publications-catalogue/circular/circulars03/NAFWC072003?lang=en>.