



The Abergelli Power Gas Fired Generating Station Order

3.2 Explanatory Memorandum

Planning Act 2008
The Infrastructure Planning
(Applications: Prescribed Forms and Procedure) Regulations 2009

PINS Reference Number: EN010069
Document Reference: 3.2
Regulation Number: 5(2)(c)
Author: Pinsent Masons LLP

Revision	Date	Description
0	May 2018	Submission Version



ABERGELLI POWER LIMITED

THE ABERGELLI POWER GAS FIRED GENERATING STATION ORDER 201*

EXPLANATORY MEMORANDUM

Introduction

1. This explanatory memorandum has been prepared to explain the purpose and effect of the provisions of the draft Abergelli Power Gas Fired Generating Station Order 201* ("**the Order**"), in accordance with regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. This document should be read alongside the Order and the various documents submitted in respect of this application for the Order.
2. This memorandum also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ("**the model provisions**"). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, the Planning Inspectorate Advice Note 13 (Preparation of a draft order granting development consent and explanatory memorandum, April 2012) notes (at page 4) that the Planning Inspectorate finds it helpful to receive a 'track change' version of the draft development consent order, showing the departures from the model provisions. This explanatory memorandum therefore also notes variations from the model provisions. The 'track change' version of the Order compared to the model provisions can be found at Appendix 1 to this document.

The Purpose of the Order

3. Abergelli Power Limited ("**APL**") has made an application pursuant to the Planning Act 2008 to the Secretary of State for a development consent order for the construction, operation and maintenance of the Abergelli Power gas fired generating station (referred to in the Order as "**the authorised development**").
4. The authorised development comprises an onshore electricity generating station in Wales with a capacity of over 50MW and therefore it constitutes a nationally significant infrastructure project ("**NSIP**") under section 15(2) of the Planning Act 2008. Accordingly, it requires development consent under section 31 of the Planning Act 2008. Development consent may only be granted by order following an application to the Secretary of State under section 37 of the Planning Act 2008.
5. In accordance with sections 120(3) and 122 of and Schedule 5 to the Planning Act 2008, the Order would, in addition to providing for the construction operation and maintenance of the authorised development, authorise the acquisition of land and rights over land, and the extinguishment or suspension of, or interference with, interests in or rights over land. The Book of Reference (Document Reference 4.3) sets out what land is to be acquired and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Statement of Reasons (Document Reference 4.1) which accompanies the application and which sets out the justification for the acquisition or interference with each relevant plot of land. The plots of land are shown on the Land Plans (Document Reference 2.2).
6. The matters for which development consent is sought under the Order can be summarised as follows:

In the City and County of Swansea:

- 6.1 The **Power Generation Plant** comprises:

6.1.1 a new Power Generation Plant in the form of an open cycle gas turbine (OCGT) peaking power generation station fuelled by natural gas with a rated electrical output of up to 299 MWe. This is the output of the generating station as a whole, measured at the terminals of the generating equipment, The Power Generation Plant comprises:

- (a) generating equipment including one Gas Turbine Generator with one exhaust gas flue stack and Balance of Plant (the "**Generating Equipment**") which are located within the **Generating Equipment Site** (numbered works 1A to 1F (inclusive) in Schedule 1 to the Order);
- (b) an access road (the "**Access Road**") running from B4489 to the Generating Equipment Site (numbered work 2 in Schedule 1 to the Order);
- (c) a temporary construction compound (numbered work 3 in Schedule 1 to the Order) required during construction only (the 'Laydown Area');
- (d) an ecological mitigation area (numbered work 4 in Schedule 1 to the Order); and
- (e) earthworks (required for the Generating Equipment and the Access Road) (numbered work 5 in Schedule 1 to the Order).

7. A further, more detailed, description of the various elements of the authorised development is provided in Schedule 1 to the Order (and the corresponding section of this Explanatory Memorandum below) and in Section 3 of the Environmental Statement (Document Reference 6.1) which accompanies this application.

8. The Power Generation Plant (including the Access Road, the Laydown Area and the earthworks) form an integral part of the nationally significant infrastructure project.

Associated development

9. Pursuant to section 115 of the 2008 Act, as the NSIP development is a generating station in Wales with a generating capacity of less than 350MW, development consent can be granted for the NSIP but not for associated development. Therefore, whilst the project will require a gas connection and an electrical connection in addition to the Power Generation Plant described above, development consent is not sought for these elements.

The Provisions of the Order

10. As the Order seeks to apply and modify statutory provisions, including those relating to the compulsory acquisition of land, the Order has been drafted as a statutory instrument, in accordance with sections 117 and 120 of the Planning Act 2008.

11. The Order consists of 44 operative provisions, each referred to as articles, and 12 Schedules.

Parts 1 (Preliminary) and 2 (Principal Powers)

12. Articles 1 (*Citation and Commencement*) and 2 (*Interpretation*) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect. Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions that are relevant in the context of the authorised development.

13. Article 2 defines 'commencement' to exclude investigations for the purpose of assessing ground conditions (including investigations necessary for the discharge of requirements 14 (site investigation), 15 (mineral resources survey) and 16 (peat management plan)) receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements. APL considers it appropriate to allow for the early completion of this work (without triggering the requirements set out in Schedule 2 of the Order)

14. As there are no ancillary works included in the Order the authorised development is referred to as such throughout the Order and the concept within the model provisions of an "authorised project" has

not been used in the Order (there are however, "ancillary matters" as defined in section 120(4) of the Planning Act 2008 including compulsory purchase powers).

15. Article 2 defines 'Order limits' as the limits shown on the works plans. Article 2 defines 'Order land' as land required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans and described in the book of reference. The Order land does not include all of the Order limits as compulsory acquisition powers and powers of temporary use are not being sought over part of the B4489.
16. The Order land and the Order limits are different as the Order limits relate to the area within which the authorised development will take place, whilst the Order land includes the land and rights required to facilitate the NSIP (including for the Gas Connection and Electrical Connection). This is the approach that was adopted for the Hirwaun Generating Station Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.
17. Article 3(1) (*Development consent etc. granted by the Order*) grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into numbered works, each of which represents a different part of the authorised development. Article 3(2) requires that the works authorised by the Order are situated within the areas shown on the Works Plans (Document Reference 2.3). This is in order to provide certainty as to what has been consented by the Order. Article 3(3) permits construction within limits of deviation which are also specified on the works plans. Requirement 2 provides for maximum and minimum parameters for certain key elements of the project. This approach, whilst going beyond the model provisions (model provision article 2), reflects a standard approach used in orders made under the Transport and Works Act 1992 and in recent development consent orders, including for example, the Progress Power (Gas Fired Power Station) Order 2015 and is appropriate in the current Order as it serves to precisely define the authorised development by reference to the plans, whilst preserving a sensible amount of flexibility in the implementation of the authorised development to allow for slight variances in ground conditions and choice of appropriate equipment and technology. The Environmental Statement (Document Reference 6.1) accompanying the DCO Application has assessed the authorised development within the full envelope provided by the limits of deviation.
18. Article 4 (*Maintenance of authorised development*) provides for the maintenance of the authorised development. Article 4(1) closely reflects the terms of the model provisions (model provision article 3). Article 4(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised. A definition of "maintain" has been included so that it is clear what the term involves. The Environmental Statement (Document Reference 6.1) accompanying the DCO Application has assessed maintenance as defined in the Order.
19. Article 5 (*Operation of authorised development*) permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the Planning Act 2008. Article 5(2) specifically preserves the need for any other operational consent that may be needed for the Power Generation Plant in addition to the Order.
20. Article 6 (1) (*Benefit of the Order*) makes clear that it is only the undertaker who may take the benefit of the Order. This drafting follows the model provision (model provision article 4). The "undertaker" is defined in Article 2 as APL, as promoter of the scheme, and anyone who has the benefit of the Order pursuant to Articles 6 and 7. This definition follows the definition of undertaker in the Wrexham Gas Fired Generating Station Order 2017.
21. Article 7 (*Consent to transfer benefit of the Order*) makes detailed provision for the transfer of the benefit of the Order and supplements Article 6(1). Under Article 7(4) the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order but such consent is not required where (i) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986; or (ii) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant. The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar financial and regulatory standing to APL so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. Article 7(5) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Articles 7(6) to (8) provide further detail on the notification that is to be given. This is based on the

notification procedure contained in Article 7 of the Wrexham Gas Fired Generating Station Order 2017. Article 7(2) has been amended from the model provisions so that it refers to 'transfer, or grant', which is considered to be more accurate than 'agreement'.

Part 3 (Streets)

22. Article 8 (*Power to alter layout etc. of streets*) allows the undertaker to alter the layout of a street or carry out any works in the street as are set out in Schedule 3 in the manner specified in Schedule 3. Article 8(2) allows for the alteration of the layout of any street within the Order land for the purposes of construction, operation or maintenance, subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority. Similar wording has been used in other made Orders, including the National Grid (North London Reinforcement Project) Order 2014 and the Hirwaun Generating Station Order 2015 (see Article 8). Wording regarding deemed consent is included in Article 42 (see below) and Schedule 12.
23. Article 9 (*Street works*) is a model provision intended to permit in certain streets (as specified in Schedule 4) the carrying out of street works for the purposes of the authorised development. Article 9(3) brings in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street works carried out pursuant to Article 9(1). This provides protection for the street authority for the street in question.
24. Article 10 (*Construction and maintenance of new or altered means of access*) provides that new or altered means of access are to be constructed to the reasonable satisfaction of the street authority and maintained at the expense of the undertaker for a year. Any part of the new or altered means of access which are proposed to be public highway (as set out on the Rights of Way, Streets and Access Plan submitted with the undertakers' application for the Order (Document Reference 2.4)) will then be maintained by the highways authority. Those parts of the new or altered means of access which are not intended to be public highway (such as private accesses which the undertaker is altering or creating and as also set out in the Rights of Way, Streets and Access Plan) will then be maintained by the street authority. Paragraphs (5) and (6) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic.
25. Article 11 (*Temporary prohibition or restriction of use of streets*) is slightly refined from the model provision and provides for the temporary alteration, diversion and prohibition or restriction on the use of streets for the purposes of carrying out the authorised development. Reference to temporary prohibition or restriction of use is a reference to the temporary control of how traffic and non-motorised users (including pedestrians) may use and pass along the streets in question. As per the model provision, this applies generally, and also applies specifically to certain streets which are set out in Schedule 6 to the Order. Article 11(2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in Article 11, to use such a street as a temporary working site. There are consultation requirements before this power can be exercised, in the case of any streets not specified in Schedule 6 the undertaker would need to secure the consent of the street authority prior to prohibiting or restricting use and compensation may be payable in respect of the loss or suspension of private rights of way. Similar wording has been used in other made Orders, including Article 11 of the Wrexham Gas Fired Generating Station Order 2017, Article 12 of the Meaford Gas Fired Generating Station Order 2016, Article 12 of Progress Power (Gas Fired Power Station) Order 2015 and Article 11 of the Hirwaun Generating Station Order 2015.
26. Article 12 (*Stopping up of streets*) is drawn from a model provision (model provision article 9) and permits the undertaker to stop up the streets specified in Schedule 7.
27. Article 13 (*Access to works*) is a model provision (model provision article 12) which permits the undertaker to form new or to improve existing means of access in the locations specified in Parts 1 and 2 of Schedule 3. For clarity, temporary and permanent means of access are dealt with separately. Other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the relevant planning authority in consultation with the highway authority.
28. Article 14 (*Agreements with street authorities*) is a model provision (model provision article 13) which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street and the alteration and diversion of the street. In

addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets, which is common in many similar orders. Similar wording has been used in other made Orders, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

29. Article 15 (*Traffic regulation*) allows, with the consent of the traffic authority, the undertaker to regulate traffic on roads (defined as a public highway maintained by and at the expense of the traffic authority) to the extent that is necessary for the purposes of or in connection with the construction of the authorised development. The Article gives effect to any prohibition, restriction or other provision made by the undertaker as if it was made by the traffic authority or local authority in whose area the road is situated. The Article is not in the general model provisions but there is a precedent for it in the Wrexham Gas Fired Generating Station Order 2017 (Article 14), which referred in its Explanatory Memorandum to its use in other made orders (including Article 37 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 and Article 38 of the Network Rail (Norton Bridge Areas Improvements) Order 2014). It is considered necessary to ensure that the authorised development can be constructed without unnecessary delay.

Part 4 (Supplemental Powers)

30. Article 16 (*Discharge of water*) is a model provision (model provision article 14) which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead. The effect of article 16 is that discharge can only be done with the consent of the owner, but consent cannot be withheld unreasonably. This article is therefore consistent with the provisions of section 146 of the Planning Act 2008.
31. Article 17 (*Authority to survey and investigate the land*) is based on the model provision (model provision article 16) which allows the undertaker to survey and/or investigate land including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation. The power extends to land "which may be affected by the authorised development" as surveys may need to be undertaken on such land to monitor the impacts of the authorised development (for example noise monitoring at residential receptors). The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development. There is a precedent for the wording included at Article 17(6) in the recently made Silvertown Tunnel Order 2018.
32. Article 18 (*Removal of human remains*) is a model provision (model provision article 17) which provides for the removal of human remains from the Order land and for their reburial in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose or for their treatment according to the wishes of any personal representatives or relatives who come forward following the giving of the necessary notices. This article has been included as APL has not been able to rule out the presence of any human remains within the Order land and is considered necessary so that there is no delay in the implementation of the authorised development.

Part 5 (Powers of Acquisition)

33. Article 19 (*Compulsory acquisition of land*) provides for the compulsory acquisition of such land as is required for the authorised development (or to facilitate the authorised development or is incidental to the authorised development). The Article broadly follows the model provision (model provision article 18), but reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 24 (*Private rights*). A similar approach was taken in the Wrexham Gas Fired Generating Station Order 2017.

34. Article 20 (*Compulsory acquisition of land – incorporation of the mineral code*) is a model provision (model provision article 19) which incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 (minerals).
35. Article 21 (*Statutory authority to override easements and other rights*) provides that by virtue of section 158 of the 2008 Act in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that by virtue of section 152 of the 2008 Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in the Wrexham Gas Fired Generating Station Order 2017.
36. Article 22 (*Time limit for exercise of authority to acquire land compulsorily*) is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition. The date of the making of the Order has been used to align with the date from which the undertaker may exercise any powers of compulsory purchase that may be contained within the Order. APL considers that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in requirement 1 of Schedule 2 of the Order.
37. Article 23 (*Compulsory acquisition of rights etc.*) is based on a model provision (model provision article 31) and entitles the undertaker to acquire rights over land which may be compulsorily acquired, including rights already in existence, or to create new rights or impose restrictions. The word "existing" has been deleted from the model provision wording in paragraph (3) in order to ensure that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the authorised development is implemented. The article introduces Schedule 8, which amends existing compensation legislation in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction. Schedule 8 does not affect the entitlement to compensation, but generally ensures that the compensation code applies to the compulsory acquisition by the creation of new rights and the imposition of restrictive covenants. The article also provides for the transfer of the power to acquire new rights to a statutory undertaker with the consent of the Secretary of State. This is to allow for the creation of easements in favour of statutory undertakers in respect of their apparatus which would not otherwise be possible as the undertaker does not own the dominant tenement. Wording has been included at paragraph (6) to make clear that legislation governing the compensation for the compulsory purchase of land is to apply in relation to the creation of new rights and the imposition of restrictions.
38. Article 24 (*Private rights*) is based on a model provision (model provision article 32) and has the effect of extinguishing private rights and restrictions over land where: (1) land is subject to compulsory acquisition; (2) the private right is inconsistent with a right being compulsory acquired (in this case extinguishment will only be in so far as their continuance would be inconsistent with the exercise of the undertaker's right); and (3) land is owned by the undertaker. The Article also suspends private rights where the private right is inconsistent with a right being compulsory acquired by the undertaker and also suspends private rights for as long as the undertaker is in temporary possession of land under the Order. The Article departs from the model provision in that it relates to all rights over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation of the Project. The Article follows the approach in Wrexham Gas Fired Generating Station Order 2017. Paragraph (4) limits the scope of the suspension of existing rights where temporary possession of land is taken pursuant to the Order.
39. Article 25 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) is a model provision (model provision article 33) that applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017A and the Wrexham Gas Fired Generating Station Order 2017.

40. Article 26 (*Acquisition of subsoil only*) permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This article is appropriate in the context of cables or pipes to be laid underground within the order land to facilitate the authorised development, where acquisition of the 'entire' freehold may not be required. This is a model provision (model provision article 34).
41. Article 27 (Application of Part 1 of the Compulsory Purchase Act 1965) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 26 or 27 of this Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017 and the Wrexham Gas Fired Generating Station Order 2017.
42. Article 28 (*Rights under or over streets*) is a model provision (model provision article 37) which allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provision). This refined wording has precedent in the Progress Power (Gas Fired Power Station) Order 2015.
43. Article 29 (*Temporary use of land for carrying out the authorised development*) allows the land specified in Schedule 9 to be temporarily used for the carrying out of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions around giving 14 days' notice and restoration of the land following the temporary works. Wording has been added to paragraph 1(a)(ii) in order to allow Article 28 to be applicable in the context of land which may be the subject of compulsory purchase, prior to any such compulsory purchase taking place. New wording has also been added to paragraphs (3) and (4) to take in to account that APL may, pursuant to Article 28(1)(a)(ii) temporarily use land that it may, eventually, compulsorily acquire. Should APL compulsorily acquire the land that it is in temporary possession of, then APL should remain in possession of such land. Wording has therefore been deleted in paragraph (8) to dovetail with the new drafting in paragraph (1). This wording closely follows that included within The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. Wording has been added at paragraph (9) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in the subsoil of any part of the Order land. It has precedent in the Wrexham Gas Fired Generating Station Order 2017. The article also disapplies the provisions of the Neighbourhood Planning Act 2017 insofar as they related to temporary possession of land under this article. There is precedent for the disapplication of the Neighbourhood Planning Act in relation to the temporary possession of land for the construction of the authorised development in Article 3 of the Silvertown Tunnel Order 2018.
44. Article 30 (*Temporary use of land for maintaining the authorised development*) provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions around giving 28 days' notice and restoration of the land following the temporary possession. This Article is broadly based on the model provision (model provision article 36) and provides for the payment of compensation for that temporary use of the land. The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the project is opened for use as this is more appropriate for this type of development. Similar wording has been used in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017. However, in order to be able to carry out the landscaping commitments set out in the landscaping plan, the maintenance period has been extended to the period in the strategy approved pursuant to Requirement 3. A similar provision was included in the North Wales Wind Farm Connection Order 2016. The model provision has also been altered to disapply the provisions of the Neighbourhood Planning Act 2017 insofar as they related to temporary possession of land under this article. There is precedent for the disapplication of the Neighbourhood Planning Act in relation to the temporary possession of land for maintenance in Article 3 of the Silvertown Tunnel Order 2018.
45. Article 31 (*Statutory undertakers*) provides for the acquisition of land belonging to statutory undertakers within the Order land. This includes a power to move the apparatus of those statutory

undertakers and to extinguish their rights. The model provision (model provision article 38) has been amended so as to allow for the suspension of rights of a statutory undertaker (for example where land is being temporarily used under the terms of the Order) rather than just extinguishment. This power is required over the whole of the Order land and similar wording has been used in made Orders for gas fired generating stations, including the Wrexham Gas Fired Generating Station Order 2017.

46. Article 32 (*Apparatus and rights of statutory undertakers in streets*) makes provision in respect of the apparatus and rights of statutory undertakers in streets which are altered or diverted or where use is temporarily prohibited or restricted under Articles 10 or 11 or where a street is stopped up under Article 12. It is a model provision (model provision article 39) but has been amended in that paragraph (2) onwards has been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 11 of the Order. For example, paragraph 4 of Part 1 of Schedule 11 deals with access to apparatus located in a street where there is a temporary prohibition or restriction on use under Article 11 and paragraphs 6 and 9 of Part 1 of Schedule 11 deal with the relocation of apparatus and payment of costs.
47. Article 33 (*Recovery of costs of new connections*) provides that persons who have to create a new connection following the exercise of powers under Article 32 may recover the costs of new connections from the undertaker. It is a model provision (model provision article 40).
48. Article 34 (*Guarantee*) provides that the undertaker must not exercise powers in relation to any land until a guarantee, in respect of the liabilities of the undertaker to pay compensation, or an alternative form of security has been put in place. Similar wording has been used in made Orders for gas fired generating stations, including the Wrexham Gas Fired Generating Station Order 2017

Part 6 (Operations)

49. Article 35 (*Felling or lopping of trees and removal of hedgerows*) provides that the undertaker may fell or lop or cut back the roots of any tree or shrub within the Order land to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused. It is based on model provision (model provision article 39). Paragraph (4) introduces Schedule 10 and has been included in a departure from the model provisions to permit the removal of hedgerows within the Order land and to authorise the removal of the important hedgerows that are specified in Schedule 10 and that may be required to be removed for the purposes of carrying out the authorised development. It should be noted that there are no protected trees located within the Order land.

Part 7 (Miscellaneous and General)

50. Article 36 (*Application of landlord and tenant law*) is a model provision (model provision article 35) which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development.
51. Article 37 (*Operational land for the purposes of the 1990 Act*) is a model provision (model provision article 36) which has the effect of ensuring that the land on which the authorised development is constructed is not excluded from being "operational land" under the Town and Country Planning Act 1990 by the effect of section 263 of that Act. A similar provision has been included in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.
52. Article 38 (*Defence to proceedings in respect of statutory nuisance*) provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which is an unavoidable consequence of the authorised development. A similar provision has been included in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

53. Article 39 (*Protective provisions*) provides for Schedule 11, which protects the interests of certain statutory undertakers, to have effect.
54. Article 40 (*Certification of plans etc.*) is a model provision (model provision article 41) which provides for the submission of the book of reference, design principles statement, environmental statement, land plans, rights of way, streets and access plans, works plans, outline construction environment management plan, outline landscape and ecological mitigation strategy, outline lighting strategy, outline construction staff travel plan, outline surface water management plan, outline drainage strategy, flood consequences assessment and hedgerow plan referred to in the Order to the Secretary of State in order that they may be certified as being true copies.
55. Article 41 (*Service of notices*) deals with the service of notices pursuant to the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006.
56. Article 42 (*Procedure in relation to certain approvals*) provides a procedure in relation to consents and approvals required pursuant to the Order. It applies to all such consents etc, bar those under requirements in Schedule 2, where a separate more detailed procedure is provided for in Schedule 12. Schedule 12 has been used in various draft development consent orders and can be seen in a similar form in the Wrexham Gas Fired Generating Station Order 2017. It also provides that the procedures set out in Schedule 12 apply to any consent, agreement or refusal which needs to be obtained under the requirements set out in Schedule 2 to the Order. Article 42 clarifies the procedure which applies in respect of these additional consents, including by making clear that the appeals process set out in Schedule 12 applies.
57. Article 43 (*Arbitration*) is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is a model provision (model provision article 42).
58. Article 44 (Application and modification of legislative provisions) modifies Regulation 6 of the Hedgerows Regulations 1997 for the purposes of the Order to permit the removal of any hedgerow for the purpose of carrying out authorised development under the Order.

Schedules

59. *Schedule 1 (Authorised development)* specifies the authorised development:
- 59.1 *Work Nos. 1A to 1F:* describe the works necessary for the **Generating Equipment** - an open cycle gas turbine power generation plant with a gross rated electrical output of up to 299 MWe, incorporating one gas turbine generator with an exhaust gas flue stack.
- 59.2 *Work No 2* describes the means of access to the Generating Equipment required together with electricity and telecommunications connections and other services (including drainage).
- 59.3 *Work No 3* describes the temporary construction laydown area and site and welfare offices and workshop.
- 59.4 *Work No. 4* describes the ecological mitigation area in which landscape and ecological mitigation will be undertaken.
- 59.5 *Work No. 5* describes the earthworks required for the Generating Equipment and the access road.
60. *Schedule 2 (Requirements)* sets out the requirements which apply to the carrying out of and operation of the authorised development under the Order. They broadly follow those set out in the model provisions, where relevant, and where they have been amended this has been done following discussions with the relevant planning authority and/or other statutory consultees. The requirements closely relate to the mitigation set out in the Environmental Statement (Document Reference 6.1).
- 60.1 Requirement 1: requires that the authorised development is commenced within five years from the Order having been made. This broadly follows the model provision.

- 60.2 Requirement 2: requirement 2(1) sets out a list of plans in accordance with which the authorised development must be carried out. The requirement also notes that any documents approved pursuant to the requirements themselves will need to be complied with. This is more robust wording than that used in the model provisions but carries the model provision principle through. Requirement 2(2) sets out parameters for key elements of the authorised development and such parameters have been assessed within the Environmental Statement (Document Reference 6.1) submitted with the application. Requirement 2(3) stipulates that the earthworks (numbered work 5) may not commence until details of levels and sections have been submitted to and approved by the relevant planning authority. Requirement 2(4) requires details of the layout, scale and appearance of key numbered works to be submitted and approved by the relevant planning authority prior to work commencing on that numbered work (insofar as not already approved under requirement 5 which provides for approval of new highway accesses). Requirement 2(5) stipulates that to the extent that design principles for any numbered work are set out in the design principles statement (Document Reference 10.2), that numbered work must be designed substantially in accordance with the relevant principle.
- 60.3 Requirement 3: secures the landscaping mitigation proposals set out in the Environmental Statement (Document Reference 6.1) through the submission of a written landscaping plan (containing certain specified details in relation to hard and soft landscaping works) in respect of numbered works 1 and 2 for the approval of the relevant planning authority. The landscape plan that is submitted for approval must be substantially in accordance with the outline landscape and ecological mitigation strategy appended to the Environmental Statement (Appendix 3.4 of Document Reference 6.2). Requirement 3 deals with the implementation and maintenance of landscaping measures and requires all landscaping works to be carried out in accordance with the plan approved pursuant to requirement 3.
- 60.4 Requirement 4: secures the submission to the relevant planning authority (in consultation with the highway authority) of the details of siting, design and layout of any new or modified accesses being created onto the highway as a result of the authorised development. Such works have to be carried out in accordance with the approved details. This follows the principle of the model provision except that it clarifies that where the details have already been provided as part of the application for this Order, they do not need to be provided again.
- 60.5 Requirement 5: secures the submission of details to the relevant planning authority for approval for all proposed permanent and temporary enclosures relating to numbered works 1 to 5. Once approved, the details are to be implemented. This requirement broadly follows the model provision.
- 60.6 Requirement 6: requires that prior to the commencement of works 1, 2 and 3, written details of the surface and foul water drainage strategy have been submitted to and approved by the relevant planning authority, in accordance with the principles set out in the outline drainage strategy contained in Appendix E of the flood consequences assessment (Appendix 9.1 of Document Reference 6.2). The Requirement secures that the surface and foul water drainage system is to be constructed in accordance with the approved details.
- 60.7 Requirement 7: requires that prior to the commencement of works 1, 2, 3, and 5 written details of the surface water management plan have been submitted to and approved by the relevant planning authority, in accordance with the principles set out in the outline surface water management plan contained in the Environmental Statement (Appendix 3.2 of Document Reference 6.2). The Requirement secures that the surface water management plan is to be constructed in accordance with the approved details.
- 60.8 Requirement 8: secures a pre-construction ecological constraints survey as set out in the Environmental Statement (Document Reference 6.1) through the submission of survey reports for badger setts, otters and water vole to the relevant planning authority in consultation with Natural Resources Wales. Where the surveys reveal badger setts, otter or water vole within the relevant working area for the authorised development, the report must set out proposed mitigation measures. The Requirement secures that mitigation is carried out in accordance with the approved details prior to construction of the authorised works.
- 60.9 Requirement 9: secures the ecological mitigation proposals set out in the Environmental Statement (Document Reference 6.1) through the submission of a written ecological management in respect of all numbered works for the approval of the relevant planning

- authority. The ecological management plan that is submitted for approval must be substantially in accordance with the outline landscape and ecological mitigation strategy appended to the Environmental Statement (Appendix 3.4 of Document Reference 6.2). Requirement 9 requires all ecological mitigation works to be carried out in accordance with the plan approved pursuant to requirement 9.
- 60.10 Requirement 10: is not a model provision. The Requirement secures the invasive species survey described in the Environmental Statement (Document Reference 6.1) and provides that no numbered work can commence until a survey has been carried out and a protocol for the management, maintenance and monitoring of the scheme has been approved in writing by the local planning authority. The Requirement specifies that the protocol shall be in accordance with the recommendations set out in the outline landscape and ecological mitigation strategy appended to the Environmental Statement (Appendix 3.4 of Document Reference 6.2). Requirement 6(2) secures the implementation of the approved protocol.
- 60.11 Requirement 11: is not a model provision. The Requirement secures the pre-construction checks on trees and hedgerows with the potential for supporting bat roosts described in the Environmental Statement (Document Reference 6.1). The Requirement provides the pre-construction checks must be substantially in accordance with Appendix C of the outline landscape and ecological mitigation strategy (Appendix 3.4 of Document Reference 6.2). Where the survey demonstrates that any trees or hedgerows proposed for removal support roosting bats, no works may be undertaken for removal of trees or hedgerows until a statement outlining mitigation measures to avoid impacts on roosting bats has been approved by the relevant planning authority, in consultation with Natural Resources Wales. Requirement 11(3) secures the implementation of the approved Method Statement.
- 60.12 Requirement 12: is not a model provision. The Requirement secures reptile method statement described in the Environmental Statement (Document Reference 6.1) which must be submitted and approved in writing by the relevant planning authority in consultation with Natural Resources Wales. The Requirement provides that the reptile method statement must be substantially in accordance with the measures set out in Appendix A of the outline landscape and ecological mitigation strategy (Appendix 3.4 of Document Reference 6.2). Requirement 12(2) secures implementation of the reptile method statement prior to commencement of the relevant numbered works.
- 60.13 Requirement 13: is derived from a model provision and requires that none of the authorised development may commence until a written scheme of archaeological investigation has been submitted to and approved by the local planning authority. The Requirement specifies particular provisions that must be made in the written scheme of archaeological investigation and specifies that the investigation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by the relevant planning authority. Requirement 13(5) makes provision for an interpretative report to be prepared and submitted to the relevant planning authority in the event that any archaeological assets are discovered during the watching brief. This requirement has been worded to reflect discussions with the relevant planning authority.
- 60.14 Requirement 14: requires that numbered works 1 and 2 may not commence until reports covering an assessment of the geotechnical properties of the substrata for that numbered work (and where necessary, a mining risk assessment and/or foundation risk assessment) have been submitted and approved by the relevant planning authority. If required, a remediation method statement must be submitted and approved by the relevant planning authority in consultation with Natural Resources Wales. Requirement 14(5) secures that any required remediation must be carried out in accordance with the approved remediation method statement. This requirement has been worded to reflect discussions with the relevant planning authority.
- 60.15 Requirement 15: is not a model provision. The requirement secures the provision of a minerals resources survey should the site investigation report demonstrate the presence of minerals. The minerals resources survey must be submitted to and approved in writing by the relevant planning authority. This requirement is necessary to comply with adopted local planning policy. Requirement 15(2) requires the undertaker to have regard to the findings of the minerals resources survey when preparing the decommissioning strategy under Requirement 27. This requirement has been worded to reflect discussions with the relevant planning authority.

- 60.16 Requirement 16: is not a model provision. This requirement secures the delivery of a peat management plan where the site investigation report demonstrates the presence of peat on the site. The need for a peat management plan is described in the Environmental Statement (Document Reference 6.1). Where peat has been identified in a relevant part of the site, no authorised works may begin in that area until a peat management plan has been submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales. Requirement 16(2) secures the implementation of the approved peat management plan.
- 60.17 Requirement 17: is not a model provision, although it does incorporate several separate provisions. The requirement secures the submission for approval by the relevant planning authority of a construction environment management plan (CEMP). The final construction environment management plan must be substantially in accordance with the outline construction environment management plan appended to the Environmental Statement (Appendix 3.1 of Document Reference 6.2). The requirement also specifies particular measures that the final CEMP must contain. All construction works are required to be undertaken in accordance with the approved CEMP.
- 60.18 Requirement 18: is not a model provision. It secures the provision of a dust management plan as described in the Environmental Statement (Document Reference 6.1). The dust management plan must be submitted and approved in writing by the relevant planning authority in consultation with Natural Resources Wales. Requirement 18(2) provides for all construction works to be undertaken in accordance with the approved dust management plan.
- 60.19 Requirement 19: is not a model provision. It secures the provision of a pollution prevent management plan as described in the Environmental Statement (Document Reference 6.1). The pollution prevention management plan must be submitted and approved in writing by the relevant planning authority in consultation with Natural Resources Wales. It must be substantially in accordance with the outline construction environmental management plan (Appendix 3.1 of Document Reference 6.2). Requirement 19(2) requires all construction works to be carried out in accordance with the approved pollution prevention management plan.
- 60.20 Requirement 20: is not a model provision. It secures the provision of a waste and material management plan as described in the Environmental Statement (Document Reference 6.1). The waste and material management plan must be substantially in accordance with the contents outlined in the outline construction environmental management plan (Appendix 3.1 of Document Reference 6.2). The waste and material management plan must be submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales. Requirement 20(2) requires all construction works to be carried out in accordance with the approved waste and material management plan.
- 60.21 Requirement 21: requires a construction traffic management plan (CTMP) to be submitted prior to the commencement of the authorised development (other than tree felling). This plan must be substantially in accordance with the outline plan that is appended to the Environmental Statement (Appendix 3.3(a) of Document Reference 6.2). The requirement specifies particular information the final CTMP must contain. Requirement 21(2) secures the implementation of the CTMP for the entire duration of the construction period.
- 60.22 Requirement 22: requires the submission to and approval by the relevant planning authority of a written construction staff travel plan prior to the date of commencement of any numbered work. The construction staff travel plan submitted for approval must be substantially in accordance with the outline construction staff travel plan that is appended to the Environmental Statement (Appendix 3.3(b) of Document Reference 6.2). The construction staff travel plan must be carried out as approved.
- 60.23 Requirement 23: is based on a model provision and specifies the days on which and hours within which (provision for start up and shut down is made) construction works and the delivery and removal of materials can take place. The requirement does not prevent the undertaker from undertaking these works outside the specified hours but this can only be done with the prior, written approval of the relevant planning authority.
- 60.24 Requirement 24: requires the undertaker to notify the relevant planning authority of the date of final commissioning, the date of completion of construction and the date of the authorised

development permanently ceasing to generate power on a commercial basis as soon as reasonably practicable and in any event within three months after the occurrence of that date.

- 60.25 Requirement 25: requires that, following the final commissioning, site-attributable noise arising from the operation of numbered work 1 must be limited to the noise levels set out in this Requirement. Noise measurements at or in close proximity to the four identified locations must be submitted to the relevant planning authority before the end of three months beginning with the date of final commissioning. Any remedial works must be carried out in accordance with the programme for implementation and the noise measurements repeated and submitted to the relevant planning authority for approval. This requirement has been worded to reflect discussions with the relevant planning authority.
- 60.26 Requirement 26: is based on a model provision and requires the submission of a written scheme for the management and mitigation of artificial light emissions for numbered work 1 for the approval of the relevant planning authority. The written scheme must be substantially in accordance with the outline lighting strategy (Appendix 3.5 to Document Reference 6.2). The approved scheme must be implemented and maintained during the operation of the relevant numbered work.
- 60.27 Requirement 27: details that within 24 months of the Order land ceasing to be used for the purposes of electricity generation, a scheme for the demolition and removal of numbered work 1 must be submitted to the relevant planning authority for approval. Subject to obtaining the necessary consents, demolition and removal of numbered work 1 must be implemented in accordance with the approved scheme. Paragraph (3) of Requirement 15 specifies that on the authorised development ceasing to be used for the purposes of the electricity generation on a commercial basis, the undertaker must notify the relevant planning authority of the same within three months of that date.
- 60.28 Requirement 28: is based on a model provision and allows the relevant planning authority to approve amendments to details or plans already specified or approved. This is to allow flexibility, however this flexibility is given strict parameters in that it only applies to the extent assessed in the Environmental Statement (Document Reference 6.1). A similar Requirement appeared in the Progress Power (Gas Fired Power Station) Order 2015. The drafting of this Requirement complies with the guidance set out in paragraph 19 of the Planning Inspectorate Advice Note 15, as it does not allow any approvals by the relevant planning authority to depart from the principles and parameters fixed by the application and assessed in the Environmental Statement (Document Reference 6.1).
61. *Schedule 3 (Streets subject to permanent and temporary alteration of layout)* sets out the streets to be permanently altered (Part 1) or temporarily altered (Part 2).
62. *Schedule 4 (Streets subject to street works)* sets out the streets that would be subject to street works (including reference to the relevant plan, the location and the specific street).
63. *Schedule 5 (Access)* sets out those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively) and those parts of works to restore temporary accesses that are to be maintained at the public expense (Part 3) or by the street authority (Part 4) which are referred to in Article 11 of the Order.
64. *Schedule 6 (Temporary prohibition or restriction of the use of streets)* sets out the streets that will be subject to a temporary prohibition or restriction on the use of that street (including reference to the relevant plan, the location and the extent of the temporary prohibition or restriction on use).
65. *Schedule 7 (Streets to be stopped up)* sets out the streets that will be subject to a permanent stopping up (including reference to the relevant plan, the location and the extent of the stopping up).
66. *Schedule 8 (Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions)* modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965, in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction.

67. *Schedule 9 (Land of which temporary possession may be taken)* sets out the land temporary possession of which may be taken pursuant to Article 29. It also makes clear the purpose for which such temporary possession may be taken.
68. *Schedule 10 (Removal of hedgerows)* sets out the details of important hedgerows which are to be removed (including reference to the relevant plan, the location and extent of hedgerows to be removed).
69. *Schedule 11 (Protective provisions)* includes draft protective provisions. Part 1 of Schedule 11 protects electricity licence holders, gas transporters and sewerage undertakers (save for National Grid which is protected by Part 3, Western Power Distribution (South Wales) plc which is protected by Part 4, Dwr Cymru Cyfyngedig which is protected by Part 5, Abergelli Solar Limited which is protected by Part 6 and Wales and West Utilities Limited which is protected by Part 7). Part 2 protects operators of electronic communications code networks.
70. In relation to Part 3, APL is engaging with National Grid to discuss and seek to agree these protective provisions.
71. In relation to Part 4, APL is engaging with Western Power Distribution (South Wales) plc to discuss and seek to agree these protective provisions.
72. In relation to Part 5, APL is engaging with Dwr Cymru Cyfyngedig to discuss and seek to agree these protective provisions.
73. In relation to Part 6, APL is engaging with Abergelli Solar Limited to discuss and seek to agree these protective provisions.
74. In relation to Part 7, APL is engaging with Wales and West Utilities Limited to discuss and seek to agree these protective provisions.
75. *Schedule 12 (Procedure for discharge of requirements)* provides a clear procedure for the discharge of requirements by the relevant planning authority. It sets out clear time limits for decisions to be made within (the deemed consent provision is being discussed with the relevant planning authorities on the basis that paragraph (1)(1)(c) allows for the parties to agree an extension to the eight week period, in writing) and makes provision for appeals to be made in the event of a refusal of an application in relation to a requirement or if the relevant planning authority requires further information to be provided in relation to that application. The wording also allows for deemed refusal by the relevant planning authority in circumstances where the relevant planning authority is of the view that the subject matter of the application would give rise to new or materially different environmental effects compared to those set out in the Environmental Statement (Document Reference 6.1).

APPENDIX 1

MARK-UP OF THE PROPOSED ORDER AGAINST THE MODEL PROVISION

~~2009-201*~~ No. 2265****

INFRASTRUCTURE PLANNING

~~The Infrastructure Planning~~

The Abergelli Power Gas Fired Generating Station Order 201[*]

~~(Model Provisions) (England
and Wales) Order 2009~~

~~Made - - - - - 1st September 2009~~ [****] 201*

~~Laid before Parliament 8th September 2009~~

~~Coming into force - - - - - 1st October 2009~~ ****

CONTENTS

£15.00

~~STATUTORY INSTRUMENTS
2009 No. 2265~~

PART 1 PRELIMINARY

~~INFRASTRUCTURE PLANNING~~

~~The Infrastructure Planning (Model Provisions) (England and
Wales) Order 2009~~

~~Made — 1st September 2009~~

~~Laid before Parliament 8th September 2009~~

~~Coming into force — 1st October 2009~~

~~The Secretary of State, in exercise of the powers conferred by section 38 of the
Planning Act~~

~~2008(a), makes the following Order:~~

1. Citation and commencement

~~1. This Order may be cited as the Infrastructure Planning (Model Provisions)
(England and
Wales) Order 2009 and shall come into force on 1st October 2009.~~

~~Model provisions~~

~~2. The provisions set out in the Schedules to this Order, of which those contained in
Schedules 1~~

~~and 4 are of general application and those contained in Schedules 2 and 3 are of
application to~~

~~development relating to railways and harbours, respectively, are prescribed as model
provisions~~

~~for the purposes of section 38 of the Planning Act 2008.~~

~~Signed by authority of the Secretary of State for Communities and Local Government~~

Bill McKenzie
-Parliamentary Under Secretary of State
1st September 2009 Department for Communities and Local Government
-SCHEDULE 1 Article 2
General model provisions
CONTENTS
12. Interpretation

PART 2 PRINCIPAL POWERS

23. Development consent etc. granted by the Order
~~(a) 2008 c.29.~~
~~2~~
34. Maintenance of authorised ~~project~~ development
5. Operation of authorised development
46. Benefit of this Order
57. Consent to transfer benefit of the Order
6. ~~Application and modification of legislative provisions~~
7. ~~Defence to proceedings in respect of statutory nuisance~~
8. ~~Street works~~

PART 3 STREETS

9. ~~Stopping up~~ 8. Power to alter layout etc. of streets
10. ~~Public rights of way~~
9. Street works
10. Construction and maintenance of new or altered means of access
11. Temporary ~~stopping up~~ prohibition or restriction of use of streets
12. Stopping up of Streets
13. Access to works
13 14. Agreements with street authorities
15. Traffic Regulation

PART 4 SUPPLEMENTAL POWERS

- 14 16. Discharge of water
15. ~~Protective work to buildings~~
16 17. Authority to survey and investigate the land
17 18. Removal of human remains

PART 5 POWERS OF ACQUISITION

- 18 19. Compulsory acquisition of land
19 20. Compulsory acquisition of land – incorporation of the mineral code
21. Statutory authority to override easements and other rights
20 22. Time limit for exercise of authority to acquire land compulsorily

- ~~21~~23. Compulsory acquisition of [rights etc.](#)
- 24. [Private](#) rights
- ~~22~~. ~~Private rights of way~~
- ~~23~~25. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
- ~~24~~26. Acquisition of subsoil only
- ~~25~~. ~~Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~
- 27. [Application of Part 1 of the Compulsory Purchase Act 1965](#)
- ~~26~~. ~~Acquisition of part of certain properties~~
- ~~27~~28. Rights under or over streets
- ~~28~~29. Temporary use of land ~~for~~ [in connection with the](#) carrying out ~~the authorised project~~ [of the authorised development](#)
- ~~29~~30. Temporary use of land for maintaining [the](#) authorised ~~project~~ [development](#)
- ~~30~~. ~~Special category land~~
- 31. Statutory undertakers
- 32. Apparatus and rights of statutory undertakers in ~~stopped-up~~ streets
- 33. Recovery of costs of new connections
- ~~34~~. ~~Railway and navigation undertakings~~
- 34. [Funding](#)

PART 6
OPERATIONS

- 35. [Felling or lopping of trees and removal of hedgerows](#)

PART 7
MISCELLANEOUS AND GENERAL

- ~~35~~36. Application of landlord and tenant law
- ~~36~~37. Operational land for [the](#) purposes of the 1990 Act
- ~~37~~. ~~Deemed consent under section 34 of the Coast Protection Act 1949~~
- ~~38~~. ~~Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~
- ~~39~~. ~~Felling or lopping of trees~~
- ~~40~~. ~~Trees subject to tree preservation orders~~
- 38. [Defence to proceedings in respect of statutory nuisance](#)
- 39. [Protective provisions](#)
- ~~41~~40. Certification of plans etc.
- 41. [Service of notices](#)
- 42. [Procedure in relation to certain approvals](#)
- ~~42~~43. Arbitration
- 3
- ~~Schedule A~~
- ~~AUTHORISED PROJECT~~
- ~~Part 1~~
- 44. [Application and modification of legislative provisions](#)

SCHEDULE 1 — AUTHORISED DEVELOPMENT

~~Part 2~~

SCHEDULE 2 — REQUIREMENTS

<u>SCHEDULE 3 — STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT</u>	
<u>PART 1 — PERMANENT ALTERATION OF LAYOUT</u>	
<u>PART 2 — TEMPORARY ALTERATION OF LAYOUT</u>	
ANCILLARY SCHEDULE 4	<u>STREETS SUBJ</u>
Schedule B	
STREETS SUBJECT TO STREET WORKS	
Schedule C	
<u>SCHEDULE 5 — ACCESS</u>	
<u>PART 1 — THOSE PARTS OF ACCESSES TO BE MAINTAINED AT THE PUBLIC EXPENSE</u>	
<u>PART 2 — THOSE PARTS OF ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY</u>	
<u>PART 3 — THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED AT THE PUBLIC EXPENSE</u>	
<u>PART 4 — THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY</u>	
<u>SCHEDULE 6 — TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS</u>	
<u>SCHEDULE 7 — STREETS TO BE STOPPED UP</u>	
Part 1	
<u>SCHEDULE 8 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIONS</u>	
STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED	
Part 2	
STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED	
Schedule D	
STREETS TO BE TEMPORARILY STOPPED UP	
Schedule E	
ACCESS TO WORKS	
Schedule F	
LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED	
Schedule G	
<u>SCHEDULE 9 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN</u>	
Schedule H	
<u>SCHEDULE 10 — REMOVAL OF HEDGEROWS</u>	
<u>SCHEDULE 11 — PROTECTIVE PROVISIONS</u>	
DEEMED CONSENT UNDER COAST PART 1	<u>FOR THE PROT.</u>
Schedule I	
DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PART 2	<u>FOR TH</u>
<u>PART 3 — FOR THE PROTECTION OF NATIONAL GRID</u>	
<u>PART 4 — FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED (SOUTH WALES) PLC</u>	
<u>PART 5 — FOR THE PROTECTION OF DWR CYMRU CYFYNGEDIG</u>	

PART 6 — FOR THE PROTECTION OF ABERGELLI SOLAR LIMITED

PART 7 — FOR THE PROTECTION OF WALES AND WEST

UTILITIES LIMITED

SCHEDULE 12 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

An application under section 37 of the Planning Act 2008(a) (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] appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(b). The [single appointed person] has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act(c).

The Secretary of State, has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(d) 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.

In accordance with section 127 of the 2008 Act (e), the Secretary of State has applied the relevant tests and is satisfied that they have been met.

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

-
- (a) 2008 c.29: The relevant provisions of the 2008 Act are amended by Chapter 6 of Part 6 of, and schedule 13 to, the Localism Act 2011 (c. 20) and by sections 22–27 of the Growth and Infrastructure Act 2013 (c. 27). Transitional provisions are contained in S.I. 2013/1124.
- (b) S.I. 2010/103, amended by S.I. 2012/635.
- (c) 2008 c.29, Section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of section 25(20) to the Localism Act 2011 (c.20).
- (d) S.I. 2009/2263, Regulation 3 was amended by S.I. 2012/635 and S.I. 2012/787. S.I. 2009/2263 was revoked by S.I. 2017/572, but continues to apply to this application for development consent by virtue of transitional provisions contained in Regulation 37(2) of that instrument.
- (e) 2008(c.29), Section 127 was amended by sections 23(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013 (c.27) and by paragraphs 64(1) and (2) of Schedule 13(1).

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Abergelli Power Gas Fired Generating Station Order 201* and comes into force on [X] 201[X].

~~1985~~

~~Schedule J~~

~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~

Interpretation

~~2.1. (1) (1)~~ In this Order—

“the 1961 Act” means the Land Compensation Act ~~1961(a);~~ 1961(a);
~~(a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.~~

~~4~~

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

(a) 1961 c.33. Section 1 was amended by paragraphs 37(a) and (b) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307: Sections 2 and 3 were repealed by paragraph 38 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307. Section 4 was amended by paragraphs 39(a), (b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307. There are other amendments to the 1961 Act which are not relevant to this Order.

(b) 1965 c.56. Section 1 was amended by part 1 of Schedule 6 and paragraph 14(2) of Schedule 4 to the Acquisition of Land Act 1981, section 4 of and paragraph 13(1)(a) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11), and paragraph 1 of Schedule 10 to the Courts Act 2003, (c.39); Sections 2, 7, 9, 14, 21, 22, 24, 26, 28 and 30, paragraph 2 of Schedule 2 and paragraphs 2(3) and 7(2) of Schedule 4 were amended by section 9(3) and paragraph 5 of Schedule 3 to the Gas Act 1986 (c.44), section 245(4) of the Town and Country Planning Act 1990 (c.8), section 151(5) of and paragraph 2(1) of Schedule 18 to the Water Act 1989 (c.15), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 (c.57), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 30(1) of the Acquisition of Land Act 1981 (c.67) and section 129 of the Local Government Act 1972 (c.70), sections 39 and 40 and paragraphs 11(1) to Schedule 5 and paragraph 1 to Schedule 4 of the Forestry Act 1967 (c.10), section 49(7)(i) of the Agriculture Act 1967 (c.22), section 15 of the Greater London Council (General Powers) Act 1967 (c.xx), and section 60(1) of the Post Office Act 1969 (c.48), sections 120(3), 124(2) and 273(1) of the Local Government Act 1972 (c.70), article 4 of S.I. 1978/829, article 3 of S.I. 1978/1125 and Part I of Schedule 6 to the New Towns Act 1981 (c.64), with section 129 words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 (c.62); Sections 2, 7, 9, 14, 21, 22, 26, 28 and 32 were amended by sections 120(3), 124(2), and 273(1) of the Local Government Act 1972 (c.70), article 4 of S.I. 1978/829, article 3 of S.I. 1978/1125, Schedule 6 Part I of the New Towns Act 1981 (c.64), sections 6, 37(4)(5), 38, and paragraphs 2(2) and 15(9) of Schedule 2 and paragraphs 3(1), 5(1) and 8 of Schedule 5 to the Channel Tunnel Act 1987 (c.53), sections 2(2), and paragraph 1 of Schedule 2 Part II and paragraph 1(8) of Schedule 3 to the Dartford–Thurrock Crossing Act 1988 (c.20), section 10(1) and paragraph 6 of Schedule 3 Part I to the Electricity Act 1989 (c.29), sections 151(5), 151(6), 155(3)–(7) of and paragraphs 2(2)(3)–(8) of Schedule 18 and paragraphs 6(1)(a) of Schedule 20 to the Water Act 1989 (c.15), section 10(1) of and paragraphs 7–13 of Schedule 3 Part I to the Electricity Act 1989 (c.29), and extended by paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 (c.12); Section 3 was amended by paragraph 3 of Schedule 15(1) to the Planning and Compensation Act 1991 (c.34); Section 4 was amended by s182(1) of the Housing and Planning Act 2016 (c.22); Section 4A was inserted by s202(1) of the Housing and Planning Act 2016 (c.22); Section 5 was amended by section 67 of the Planning and Compensation Act 1991 (c.34) and paragraph 60 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 6 was amended by paragraph 61 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 7 was also extended by section 237(4)(a) of the Town and Country Planning Act 1990 (c.8), and by section 78(2)(a), and paragraph 5(4) of Schedule 10 to the Housing Act 1988 (c.50); Section 8 was amended by paragraphs 62(b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraph 2 of Schedule 17(1) to the Housing and Planning Act 2016 (c.22); Section 9 was also amended by section 1(1) of and Schedule 1 to the Statute Law (Repeals) Act 1973 (c.39), section 52(10)(a) of the Land Compensation Act 1973 (c.26), section 13(3) and paragraphs 4 and 5 to Schedule 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c. 34), section 146(10) of the Town and Country Planning Act (c.8) and

“the 1980 Act” means the Highways Act ~~1980~~1980(a);

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

by section 54(7) of the Land Compensation Act (c.26); Section 10 was amended by paragraph 63 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraphs 13(2)(a) and (b) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11); Section 11 was amended by s186(2)(a)(i), s186(2)(a)(ii), s186(2) (b), s187(2), s188 and paragraph 6 of Schedule 14 to the Housing and Planning Act 2016 (c.22), paragraphs 14(3)(a) and (b) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1, and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 11A was added by s186(3) of the Housing and Planning Act 2016 (c.22); Section 11B was added by s187(3) of the Housing and Planning Act 2016 (c.22); Section 12(6) was amended by paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c.22); Section 13 was amended by section 139 (5), (6), (7), (8), (9), paragraph 28(2) of Schedule 13 and paragraph 1 of Schedule 23(3) to the Tribunals, Courts and Enforcement Act 2007 (c.15); Section 15 was amended by paragraph 65 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 16 was amended by paragraph 66 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 17 was amended by paragraph 67 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 18 was amended by paragraph 68 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 19 was amended by paragraph 69 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 20 was amended by paragraph 4 of Schedule 15(I) to the Planning and Compensation Act 1991 (c. 34) and paragraph 70 of Schedule 1 to the Transfer of Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 22 was also modified by paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), and excluded by section 10(3) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66); Section 23 was amended by paragraph 4(1) of Schedule 11(2) to the Constitutional Reform Act 2005 c.4; Section 24 was also amended by s17(2)(3) and Schedule 2 to the Rentcharges Act 1977 (c.30); Section 25 was amended by paragraph 4(1) of Schedule 11(2) to the Constitutional Reform Act 2005 c.4, and s1(1) and Part IX of Schedule 1 to the Statute Law (Repeals) Act (c.39); Section 26 was also amended by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34); Section 27 was repealed by article 3 and Schedule 1 to S.I. 1990/776; Section 29 was repealed by paragraph 1 of Schedule 23(3) to the Courts and Enforcement Act 2007 (c.15); Section 30 was also amended by section 34(1) and paragraph 14(4) of Schedule 4 to the Acquisition of Land Act 1981 (c.67); Section 31 was amended by s34(1) and paragraph 14(5) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 19(b) of Schedule 15(II) to the Planning and Compensation Act 1991 (c.34) and paragraph 12(2) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1; Section 32 was also amended by section 34(1), and paragraph 14(6) of Schedule 4 to the Acquisition of Land Act 1981 (c.67); Paragraph 10 of Schedule 1 was amended by Schedule 9(3), Schedule 3 Part II paragraph 5 of the Gas Act 1986 (c.44), sections 10 and 14(4) of the Land Commission Act 1967 (c. 1), section 28(4) and Schedule 3 paragraph 3 of the Courts Act 1971 (c. 23), sections 47(6) and 52(2) of the Highways Act 1971 (c. 41), section 10(1) and Schedule 3 paragraphs 6–13 of the Electricity Act 1989 (c.29), section 78(2)(b) and Schedule 10 Part III paragraph 20–23 of the Housing Act 1988 (c.50), section 578 of the Housing Act 1985 (c.68), section 37(4) of the Land Drainage Act 1976 (c. 70), sections 6(2)(4)(6)(7) and 27, Schedule 4 Part II and Schedule 7 paragraph 5(5) of the Development of Rural Wales Act 1976 (c.75), article 4 of S.I. 1978/268, section 250 and Schedule 19 of the Highways Act 1980 (c.66), section 245(4) of the Town and Country Planning Act 1990 (c. 8), section 151(5) and Schedule 18 paragraph 2(1) (with sections 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Schedule 26 paragraphs 3(1)(2), 17, 40(4), 57(6), 58) of the Water Act 1989 (c.15), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 (c.57), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 30(1) of the Acquisition of Land Act 1981 (c.67), and section 129 of the Local Government Act 1972 (c. 70) Words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 (c. 62) and modified by section 13(3), Schedule 3 paragraphs 4 and 5 of Agriculture (Miscellaneous Provisions) Act 1968 (c. 34); Paragraph 2 of Schedule 2 was modified by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c. 34), section 10(2) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), paragraph 14 of Schedule 3A to the Town and Country Planning Act 1968 (c. 72) and Schedule 2, Appendix A to the Land Commission (Dissolution) Act 1971 (c. 18); Paragraph 13 of Schedule 2A was amended by paragraph 3 of Schedule 17(1) to the Housing and Planning Act 2016 (c.22). There are other amendments to the 1965 Act which are not relevant to this Order.

- (a) 1980 c.66. Section 328 was amended by sections 27, 28 and 54 of, and paragraphs 1(2) of Part I and 2 of Part III of Schedule 2 to the Town and Country Planning Act 1990 (c.8), by sections 3 and 19 of, and paragraph 9 of Schedule 3 to the Dartford–Thurrock Crossing Act 1988 (c.20), s35, and by paragraphs 7(1) and 10(1) of Schedule 4 to the Channel Tunnel Act 1987 (c.53), and extended by sections 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1) of, and paragraph 1(2)(xxv)(8) of Schedule 25 and paragraphs 3(1)(2), 17, 40(4), 57(6), and 58 of Schedule 26 to the Water Act 1989 (c.15), and by s112(1)(3) of, and paragraph 2(4)(d)(6)(9) of Schedule 16, paragraphs 33 and 35(1) of Schedule 17 to the Electricity Act 1989 (c.29), and by s67(1)(3) of, and paragraph 2(1)(xi) of Schedule 7 and paragraph 33 of Schedule 8 to the Gas Act 1986 (c.44). There are other amendments to the 1980 Act which are not relevant to this Order.

(b) 1984 c.27.

“the 1990 Act” means the Town and Country Planning Act ~~1990~~[\(e\)1990\(a\)](#);
“the 1991 Act” means the New Roads and Street Works Act ~~1991~~[\(d\)1991\(b\)](#);
“the 2008 Act” means the Planning Act ~~2008~~[\(e\);2008\(c\)](#);

- [\(a\)](#) [1990 c.8. Section 106 was amended by section 12\(1\) of the Planning and Compensation Act 1991 \(c.34\), paragraphs 3\(2\) and 3\(3\) of Schedule 2 to the Growth and Infrastructure Act 2013 \(c. 27\), sections 33\(2\), 33\(3\), 33\(4\) and 33\(5\) of the Greater London Authority Act 2007 \(c. 24\), and by sections 174\(2\)\(a\), 174\(2\)\(b\) and 174\(2\)\(c\) of the Planning Act 2008 \(c. 29\); Section 264 was amended by paragraph 54 of Schedule 1 to the Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60\), paragraph 9 of Schedule 3\(1\) to the British Waterways Board \(Transfer of Functions\) Order 2012/1659, paragraph 14 of Schedule 1\(1\) to the Transport for London \(Consequential Provisions\) Order 2003/1615, paragraphs 20\(a\) and 20\(b\) of Schedule 12 to the Localism Act 2011 \(c. 20\), paragraph 18 of Schedule 4\(2\) to the Infrastructure Act 2015 \(c. 7\), and by paragraph 13\(a\)\(i\) of Schedule 1\(III\) to the Transport Act 2000 \(Consequential Amendments\) Order 2001/4050. There are other amendments to the 1990 Act which are not relevant to this order.](#)
- [\(b\)](#) [1991 c.22. Section 48 was amended by section 124\(2\) of the Local Transport Act 2008 \(c.26\); Section 49 was amended by paragraphs 117\(a\) and 117\(b\) of Schedule 1\(2\) to the Infrastructure Act 2015 \(c.7\); Section 50 was amended by section 124\(3\) of the Local Transport Act 2008 \(c.26\); Section 51 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 54 was amended by the transitional provisions specified in article 6\(1\)–\(3\) and \(5\) of SI 2007/3174 and by section 49\(1\) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c. 18\); Section 55 was amended by section 51\(9\) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\), and subject to transitional provisions specified in article 6\(4\) and \(5\) of SI 2007/3174 by section 49\(2\) of the Traffic Management Act 2004 \(c.18\); Section 56 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c. 18\), and wording was amended subject to transitional provisions specified in article 5 of SI 2007/3174 by section 43 of the Traffic Management Act 2004 \(c.18\); Section 56A was inserted subject to transitional provisions specified in article 4 of SI 2007/1890 and article 5 of SI 2007/3174 by Section 44 of the Traffic Management Act 2004 \(c.18\); Section 57 was amended by section 52\(3\) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c. 18\); Section 58 was amended subject to transitional provisions specified in article 7 of SI 2007/3174 and article 6 of SI 2007/1890 by the Traffic Management Act 2004 \(c.18\) and amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 58A was inserted subject to transitional provisions specified in article 7 in SI 2007/1890 and article 8 in 2007/3174 by section 52\(1\) of the Traffic Management Act 2004 \(c.18\); Section 59 was amended by section 42 of Traffic Management Act 2004 \(c.18\); Section 60 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 63 was amended by paragraph 118 of Schedule 1\(2\) to the Infrastructure Act 2015 \(c.7\); Section 64 was amended by section 52\(4\) of the Traffic Management Act 2004 \(c. 18\) and by paragraph 12 of Schedule 7 to the Road Traffic Act 1991 \(c.40\); Section 65 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 66 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 67 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 68 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 69 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 70 was amended subject to transitional provisions specified in article 9 in SI 2007/3174 by section 54 of the Traffic Management Act 2004 \(c.18\) by section 40\(3\) of that same Act, and by regulation 17\(2\) of Street Works \(Registers, Notices, Directions and Designations\) \(England\) Regulations 2007/1951; Section 71 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 73F was added by section 59 of Traffic Management Act 2004 \(c.18\); Section 74 was amended by sections 256\(2\), \(3\)\(a\), \(3\)\(b\), \(4\), \(5\), \(6\) and \(7\) of the Transport Act 2000 \(c.38\), sections 40\(4\) and 52\(5\) of the Traffic Management Act 2004 \(c.18\) and by paragraph 119 of Schedule 1\(2\) to the Infrastructure Act 2005 \(c.7\); Section 74A was amended by section 255\(1\) of the Transport Act 2000 \(c.38\), section 40\(4\) of the Traffic Management Act 2004 \(c.18\) and by paragraphs 120\(2\) and 120\(3\) of Schedule 1\(2\) to the Infrastructure Act 2015 \(c.7\); Section 74B was amended by section 255\(1\) of the Transport Act 2000 \(c.38\); Section 79 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 83 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 86 was added by paragraph 121 of Schedule 1\(2\) to the Infrastructure Act 2015 \(c.7\); Section 88 was amended by sections 52\(6\) and 40\(5\) of the Traffic Management Act 2004 \(c.18\); Section 89 was amended by section 52\(7\) of the Traffic Management Act 2004 \(c.18\) and by paragraph 57\(1\) of Schedule 1 to the Water Consolidation \(Consequential Provisions\) Act 1991 \(c.60\); Section 92 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 \(c.18\); Section 93 was amended by section 49\(3\) of the Traffic Management Act 2004 \(c.18\); Section 95A was inserted subject to transitional provisions specified in article 3 of SI 2007/1890 and article 3 of SI 2007/3174 by section 41\(1\) of the Traffic Management Act 2004 \(c.18\); Section 106 was amended by section 41\(2\) of the Traffic Management Act 2004 \(c.18\) and by paragraph 122 of Schedule 1\(2\) of the Infrastructure Act 2015 \(c.7\). There are other amendments to the 1991 Act which are not relevant to this Order.](#)
- [\(c\)](#) [2008 c.29. Section 14 was amended by article 2\(2\) of the Infrastructure Planning \(Waste Water Transfer and Storage\) Order 2012/1645 and by articles 2\(2\)\(a\) and 2\(2\)\(b\) of the Infrastructure Planning \(Radioactive Waste Geological Disposal Facilities\) Order 2015/949; Section 74 was amended by Localism Act 2011 \(c. 20\) Schedule 25\(20\) paragraph 1 and Localism Act 2011 \(c. 20\) Schedule 13\(1\) paragraph 29\(3\); Section 83 was amended by paragraphs 35\(2\) and 35\(3\) of schedule 13\(1\) and paragraph 1 of section 25\(20\) to the Localism Act 2011 \(c.20\); Section 103 was amended by paragraph 48\(4\) of Schedule 13\(1\) and paragraph 1 of Schedule 25\(20\) to the Localism Act 2011 \(c.20\); Section 104 was amended by paragraphs 49\(2\), \(3\)\(a\), \(3\)\(b\), \(3\)\(c\), \(4\), \(5\)\(a\), \(5\)\(b\), \(6\) and \(7\) of Schedule 13\(1\) to the Localism Act 2011 \(c.20\), and by section 58\(5\) of the Marine and Coastal Access Act 2009 \(c.23\); Section 114 was amended by paragraphs 55\(2\)\(a\), \(2\)\(b\) and \(3\) of Schedule 13\(1\) to the Localism Act 2011 \(c.20\); Section 115 was amended by paragraph 1 of Schedule 25\(20\) to the Localism Act 2011 \(c.20\), sections 160\(2\), \(3\), \(4\), \(5\), and \(6\) of the Housing and Planning Act 2016 \(c.22\); Section 120 was amended by section 140 and paragraph 60\(2\) and \(3\) of Schedule 13\(1\) to the Localism Act 2011 \(c.20\); Section 122 was amended by paragraph 62 of Schedule 13\(1\) to the Localism Act 2011 \(c.20\); Section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016 \(c.22\); Section 127 was amended by section 23\(2\)\(a\), 23\(2\)\(b\) and 23\(2\)\(c\) of the Growth and Infrastructure Act 2013, \(c. 27\) and by paragraph 64\(2\) of Schedule 13\(1\) to the Localism Act 2011 \(c.20\); Section 134 was amended by 142\(2\)\(a\) and \(3\) and paragraph 1 of Schedule 25\(21\) to the Localism Act 2011 \(c.20\), and paragraphs 6\(1\)\(a\) and 6\(1\)\(b\) of Schedule 1 to the Housing and Planning Act 2016 \(Compulsory Purchase\) \(Corresponding Amendments\) Regulations 2017/16; Section 138 was amended by sections 23\(4\)\(a\), 23\(4\)\(b\) and 23\(4\)\(c\) of the Growth of Infrastructure Act 2013 \(c.27\); Section 152 was amended by paragraph 293](#)

“Abergelli Power Limited” means Abergelli Power Limited (Company No. 8190497) whose registered office is at Drax Power Station, Drax, Selby, United Kingdom, YO8 8PH;
“address” includes any number or address used for the purposes of electronic transmission;
“apparatus” has the same meaning as in Part 3 of the 1991 Act;
~~“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not development within the meaning of section 32 of the 2008 Act;~~
~~“authorised development” means the development and associated development described in Part 1 of Schedule A-1 (authorised project) [and any other development authorised by this Order];~~
~~“the authorised project” means the authorised development and the ancillary works authorised by this Order;~~
~~“the “book of reference” means the book of reference with submission document reference number 4.3 and which is certified by the decision-maker Secretary of State as the book of reference for the purposes of this Order;~~
~~“building” includes any structure or erection or any part of a building, structure or erection;~~
~~“carriageway” has the same meaning as in the 1980 Act;~~
~~“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;~~
~~“the decision-maker” has the same meaning as in section 103 of the 2008 Act;~~
~~“highway” and “highway authority” have the same meaning as in the 1980 Act;~~
~~“the land plan” means the plan certified as the land plan by the decision-maker for the~~
~~“commence” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including investigations necessary for the discharge of requirements 14 (site investigation), 15 (mineral resources survey) and 16 (peat management plan)) receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;~~
~~“commissioning” means the process of testing all systems and components of the authorised development (which are installed or in relation to which installation is near complete) in order to ensure that they, and the authorised development as a whole, functions in accordance with the plant design specifications and the undertaker’s operational and safety requirements;~~
~~“date of completion of construction” means the date on which the construction of the authorised development is complete including rectification of any construction defects, landscaping and reinstatement works;~~
~~“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis but excluding the generation of power during commissioning;~~

of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 161 was amended by paragraph 4(3) of Schedule 8(1) to the Marine and Coastal Access Act 2009 (c.23) and by paragraphs 41(3)(a) and 41(3)(b) of Schedule 4(1) to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664.

“design principles statement” means the design principles statement with submission document reference number 10.2 and certified as such by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

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

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

“the environmental statement” means the environmental statement submitted with submission document reference numbers 6.1, 6.2, 6.3, 6.4.0 and which is certified as such by the Secretary of State for the purposes of this Order;

~~“Order land” means the land shown on the land plan which is within the limits of land to be~~

~~acquired and described in the book of reference;~~

~~(a) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation~~

~~Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential~~

~~Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning~~

~~and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1)~~

~~of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to,~~

~~the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2)~~

~~of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals,~~

~~Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to,~~

~~the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act~~

~~1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and~~

~~Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England~~

~~(Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant~~

~~to this Order.~~

~~(b) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2);~~

~~1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51);~~

~~section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority~~

~~Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local~~

~~Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of~~

~~Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph~~

~~45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.~~

~~(c) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.~~

~~(d) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).~~

~~(e) 2008 c.29.~~

~~5~~

~~“the Order limits” means the limits shown on the works plan within which the authorised~~

~~project may be carried out;~~

~~“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land~~

~~Act 1981(a);~~

~~“relevant planning authority” means—~~

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~“rights plan” means the plan certified as the rights plan by the decision-maker for the purposes~~

~~of this Order;~~

~~“the sections” means the sections shown on the plan certified as the section drawings plan by~~

~~the decision-maker for the purposes of this Order;~~

~~“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the~~

~~2008 Act;~~

~~“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;~~
~~“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;~~
~~“tree preservation order” has the meaning given in section 198 of the 1990 Act;~~
~~“the tribunal” means the Lands Chamber of the Upper Tribunal;~~
~~“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act;~~
~~“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and~~
~~“the works plan” means the plan certified as the works plan by the decision-maker for the purposes of this Order.~~

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

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

~~[NOTE: In the case of off-shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body as the relevant planning authority.]~~

~~Development consent etc. granted by the Order~~

~~2. Subject to the provisions of this Order and to the requirements in the Schedule (requirements)~~

~~attached to this Order the undertaker is granted—~~

~~(a) development consent for the authorised development; and~~

~~(b) consent for the ancillary works;~~

~~to be carried out within the Order limits.~~

~~(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation~~

~~Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~-6~~

“exhaust gas emission flue stack” means the exhaust gas emission flue stack including ancillary support structures, sound proof cladding, and emissions monitoring platforms;

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

“flood consequences assessment” means the flood consequences assessment contained in appendix 9.1 of the environmental statement and certified as the flood consequences assessment by the Secretary of State for the purposes of this Order;

“gas turbine generator” means one gas turbine which drives a single electricity generator for the purposes of generating electricity including air inlet filter house, air inlet duct, exhaust

diffuser, and auxiliaries such as lube oil system, air dryers, fuel gas filter package, instrument air system and compressor washing;

“gross rated electrical output” means the aggregate of gross electrical power as measured at the terminals of the generator in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2016;

“hedgerow plan” means the hedgerow plan with submission document reference 2.9 and which is certified as the hedgerow plan by the Secretary of State for the purposes of this Order;

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

“land plans” means the plans with submission document reference number 2.2 and which are certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means in respect of numbered works 1, 2 and 3 the outer limits of the corresponding numbered area shown on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development but only insofar as such activities are unlikely to give rise to any materially new or different environmental effects from those assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH and/or National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH as the context requires;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is 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;

“outline construction environment management plan” means the outline construction environment management plan contained in appendix 3.1 of the environmental statement and which is certified as the outline construction environmental management plan by the Secretary of State for the purposes of this Order;

“outline construction staff travel plan” means the outline construction staff travel plan contained in appendix 3.3b of the environmental statement and which is certified as the outline construction staff travel plan by the Secretary of State for the purposes of this Order;

“outline construction traffic management plan” means the outline construction traffic management plan contained in appendix 3.3a of the environmental statement and which is certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order;

“outline drainage strategy” means the outline drainage strategy contained in appendix E of the flood consequences assessment and which is certified as the outline drainage strategy by the Secretary of State for the purposes of this Order;

“outline landscape and ecological mitigation strategy” means the outline landscape and ecological mitigation strategy contained in appendix 3.4 of the environmental statement and which is certified as the outline landscape and ecological mitigation strategy by the Secretary of State for the purposes of this Order;

“outline lighting strategy” means the outline lighting strategy contained in appendix 3.5 of the environmental statement and which is certified as the outline lighting strategy by the Secretary of State for the purposes of this Order;

“outline surface water management plan” means the outline surface water management plan in appendix 3.2 of the environmental statement and which is certified as the outline surface water management plan by the Secretary of State for the purposes of this Order;

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

“relevant planning authority” means the City and County of Swansea Council in relation to land in its area;

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

“rights of way, streets and access plans” means the plans with submission document reference number 2.4 and which is certified as the rights of way, streets and access plan by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and shall include a public communications provider as defined by the Communications Act 2003c;

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

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

“traffic authority” has the same meaning as in the 1984 Act;

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

“undertaker” means Abergelli Power Limited or any other person who for the time being has the benefit of this Order in accordance with articles 6 and 7 of this Order;

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

“works plans” means sheet 1 of 2 and sheet 2 of 2 of the plans with submission document reference number 2.3 and which are certified as the works plans by the Secretary of State for the purposes of this Order.

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

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plan and rights of way, streets and access plan are to **be taken to be measured along that work.**

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

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

(6) A reference to numbered work 1 means 1A to 1F (inclusive) and a reference to numbered work 5 means 5A and 5B comprising part of the authorised development as numbered in Schedule 1 (authorised development).

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

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

(9) References to any statutory body include that body’s successor bodies as from time to time have jurisdiction over **the authorised development.**

(a) 1981. c.67. Section 7 was amended by paragraph 9 of Schedule 15(I) to the Planning and Compensation Act 1991 (c.34). There are other amendments to this section which are not relevant to this Order.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

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

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

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

Maintenance of authorised ~~project~~ development

~~4.3. The undertaker may at any time maintain —~~(1) The undertaker may at any time maintain the authorised ~~project, development~~ except to the extent that this Order or an agreement made under this Order, ~~provides otherwise.~~

~~Benefit of Order~~

~~4. Subject to article 5 (consent to transfer benefit of Order), the provisions of articles [] and []~~

~~[specify relevant articles] shall have effect solely for the benefit of [specify person, body or class of person].~~

~~[NOTE: This article is required where provisions of the Order are specific to a named undertaker~~

~~or class of undertaker (see section 156(2) of the 2008 Act).]~~

~~Consent to transfer benefit of Order~~

~~5.—(1) The undertaker may, with the consent of the [specify person or body] —~~

~~(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 so agreed.~~

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

Operation of authorised development

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

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

Benefit of this Order

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

Consent to transfer benefit of the Order

7.—(1) Subject to paragraph (4), the undertaker may—

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

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

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

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989(a) or section 7 of the Gas Act 1986(b); or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the ~~restrictions, liabilities and obligations~~ that will apply to the person exercising the powers transferred or granted; and

(a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), sections 89(3), 136(1), 136(2), 145(5), 145(6), and 145(7), and paragraph 5 of Schedule 19 and paragraph 1 of Schedule 23(1) to the Energy Act 2004 (c.20), articles 6(2)(a), 6(2)(b), 6(3), 6(4) of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012/2400, regulation 19 of the Electricity and Gas (Internal Markets) Regulations 2011/2704, and by paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c.27).

(b) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by sections 3(2) and 76(3) and 76(4) of and paragraph 4 of schedule 6(1) and paragraph 1 of schedule 8 to the Utilities Act 2000 (c.27), regulation 18(2) of the Electricity and Gas (Internal Markets) Regulations 2011/2704, section 149(5) of the Energy Act 2004 (c.20), and regulation 18 of the Electricity and Gas (Internal Markets) Regulations 2011/2704.

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b)7(6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

PART 3

STREETS

Power to alter layout etc. of streets

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

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order land and, without limitation on the scope of this paragraph, the undertaker may—

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

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

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

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

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

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order land and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

~~would apply under this Order if those benefits or rights were exercised by the undertaker.~~

~~Application and modification of legislative provisions~~

~~6.—(1) Subject to the modifications set out in paragraph (2) the following provisions of the~~

~~[insert short title of the relevant Act] shall be incorporated in this Order—~~

~~(a) section[s] X [specify relevant section(s)].~~

~~(2) The modifications are: [insert relevant modifications].~~

~~(3) In construing the [insert short title of the relevant Act] as incorporated the following~~

~~expressions shall have the following meanings: [insert relevant expressions and definitions]~~

~~Defence to proceedings in respect of statutory nuisance~~

~~7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—~~

~~(a) the defendant shows that the nuisance—
(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given (a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.
7~~

~~under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(a); or~~

~~(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or~~

~~(b) the defendant shows that the nuisance—~~

~~(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or~~

~~(ii) is a consequence of the use of the authorised project and that it cannot reasonably be~~

~~avoided.~~

~~(2) Section 61(9) (consent for work on construction site to include statement that it does not of~~

~~itself constitute a defence to proceedings under section 82 of the Environmental Protection Act~~

~~1990) of the Control of Pollution Act 1974 and section 65(8) of that Act~~

~~(corresponding provision~~

~~in relation to consent for registered noise level to be exceeded), shall 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 project.~~

~~Street works~~

~~8.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any~~

~~of the streets specified in Schedule B (streets subject to street works) as is within the Order limits~~

~~and may—~~

~~(a) break up or open the street, or any sewer, drain or tunnel under it;~~

~~(b) tunnel or bore under the street;~~

~~(c) (e) place and keep apparatus in the street;~~

~~(d) (d) maintain apparatus in the street or change its position or remove it; and~~

(e) carry out all necessary works required for the execution of the works required under article 8 (power to alter layout, etc. of streets) including removal and relocation or reinstatement of drainage, fence lines and signage and pruning or removal of vegetation to improve visibility; and

(f) (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) ~~and (d), (d) and (e).~~

(2) (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) (3) ~~The~~ Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

~~(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.~~

~~[NOTE: This article should not be used for the purposes of authorising street works that affect a~~

~~trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets~~

~~subject to street works). For any street works affecting a trunk road the undertaker should make~~

~~an application for a licence under section 50 of the 1991 Act.]~~

~~Stopping up of streets~~

~~9.—(1) Subject to the provisions of this article, the undertaker may, in connection with the~~

~~carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2)~~

~~of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the~~

~~letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.~~

~~(a) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the~~

~~Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.~~

~~-8~~

~~(2) No street specified in columns (1) and (2) of Part 1 of Schedule C (being a street to be~~

~~stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this~~

~~article unless —~~

~~(a) the new street to be substituted for it, which is specified in column (4) of that Part of that~~

~~Schedule, has been completed to the reasonable satisfaction of the street authority and is~~

~~open for use; or~~

~~(b) a temporary alternative route for the passage of such traffic as could have used the street~~

~~to be stopped up is first provided and subsequently maintained by the undertaker, to the~~

~~reasonable satisfaction of the street authority, between the commencement and~~

~~termination points for the stopping up of the street until the completion and opening of~~

~~the new street in accordance with sub-paragraph (a).~~

~~(3) No street specified in columns (1) and (2) of Part 2 of Schedule C (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land~~

~~which abuts on either side of the street to be stopped up.~~

~~(4) The condition referred to in paragraph (3) is that —~~

~~(a) the undertaker is in possession of the land; or~~

~~(b) there is no right of access to the land from the street concerned; or~~

~~(c) there is reasonably convenient access to the land otherwise than from the street concerned; or~~

~~(d) the owners and occupiers of the land have agreed to the stopping up.~~

~~(5) Where a street has been stopped up under this article —~~

~~(a) all rights of way over or along the street so stopped up shall be extinguished; and~~

~~(b) the undertaker may appropriate and use for the purposes of the authorised project so~~

~~much of the site of the street as is bounded on both sides by land owned by the undertaker.~~

~~(6) Any person who suffers loss by the suspension or extinguishment of any private right of way~~

~~under this article shall be entitled to compensation to be determined, in case of dispute, under Part~~

~~1 of the 1961 Act.~~

~~(7) This article is subject to article 32 (apparatus etc. of statutory undertakers).~~

~~Public rights of way~~

~~10.— (1) With effect from the [date of publication of this Order] [the date of certification by the~~

~~local highway authority that the agreed alternative right of way has been created to the standard~~

~~defined in the implementation plan], [the section of] the public right of way (being a [insert one~~

~~of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between~~

~~the points [A] and [B] on the rights plan is extinguished.~~

~~(2) With effect from [that same date] [insert later date] an alternative section of [insert description of right of way of that same type] as marked in [green] between the points [C] and [D]~~

~~on the rights plan is created.~~

~~(3) In this article —~~

~~“implementation plan” means the written plan agreed between the undertaker and the local~~

~~highway authority for creation of the agreed alternative right of way to the defined standard;~~

~~and~~

~~“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.~~

~~Temporary stopping up of streets~~

~~11.— (1) The undertaker, during and for the purposes of carrying out the authorised project, may~~

~~temporarily stop up, alter or divert any street and may for any reasonable time —~~

Construction and maintenance of new or altered means of access

10.—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (Access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (Access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 8(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 (Access) must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(4) Those restoration works carried out pursuant to article 8(3) (power to alter layout, etc., of streets) identified in Part 4 of Schedule 5 (Access) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), a court is, in particular, to have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed.

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary prohibition or restriction of use of streets

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

- (a) ~~(a)~~ divert the traffic from the street; and
- (b) ~~(b)~~ subject to paragraph (3)2), prevent all persons from passing along the street, prevent all persons from passing along the street.

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

(3) ~~(2)~~ The undertaker shall ~~must~~ provide reasonable access for ~~non-motorised users (including pedestrians)~~ going to or from premises abutting a street affected by the temporary ~~stopping up, alteration or diversion of a street under prohibition or restriction of a street under this article if there would otherwise be no such access.~~

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets specified in columns (1) and (2) of Schedule 6 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

Stopping up of Streets

12.—(1) The undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 7 (Streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way, streets and access plan, in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 7 (being a street to be stopped up) shall be wholly or partially stopped up under this article unless the condition specified in paragraph (3) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(3) The condition referred to in paragraph (2) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and any lessee of the land have agreed to the stopping up.

(4) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is stopped up under paragraph (1).

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

(6) This article is subject to article 32 (apparatus and rights of statutory undertakers in streets).

Access to works

13.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 3 (streets subject to permanent and temporary alteration of layout);
- (b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 3 (streets subject to permanent and temporary alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of

access, at such locations within the Order land as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

14.—(1) A street authority and the undertaker may enter into agreements with respect to— this article if there would otherwise be no such access:

~~(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.~~

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

~~(a) any street specified as mentioned in paragraph (3) without first consulting the street~~

~~authority; and~~

~~(b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.~~

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

~~Act.~~

~~Access to works~~

~~12. The undertaker may, for the purposes of the authorised project—~~

~~(a) form and lay out means of access, or improve existing means of access, in the location~~

~~specified in columns (1) and (2) of Schedule E (access to works); and~~

~~(b) with the approval of the relevant planning authority after consultation with the highway~~

~~authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for~~

~~the purposes of the authorised project.~~

~~Agreements with street authorities~~

~~13.—(1) A street authority and the undertaker may enter into agreements with respect to—~~

~~(a) the construction of any new street including any structure carrying the street ~~over or~~~~

~~(b) under a [insert description of development] authorised ~~the strengthening, improvement, repair or reconstruction of any street under the powers conferred~~ by this Order;~~

~~(c) the maintenance of the structure of any bridge or tunnel carrying a street ~~over or under a~~ [insert description of development];~~

~~(d) any ~~stopping up, alteration or~~ diversion, ~~prohibition or restriction in the use~~ of a street authorised by this Order; or~~

~~(e) the carrying out in the street of any of the works referred to in article ~~8(1) (street works)~~ 10(1) (construction and maintenance of new or altered means of access).~~

~~(2) Such an agreement may, without prejudice to the generality of paragraph (1)—~~

~~(a) make provision for the street authority to carry out any function under this Order which~~

~~relates to the street in question;~~

~~(2) Such an agreement may, without prejudice to the generality of paragraph (1)—~~

~~(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;~~

~~(b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and~~

~~(c) contain such terms as to payment and otherwise as the parties consider appropriate.~~

~~Discharge of water~~

~~14.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage~~

~~of water in connection with the carrying out or maintenance of the authorised project 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.~~

~~—10~~

~~(c) contain such terms as to payment and otherwise as the parties consider appropriate.~~

Traffic Regulation

~~15.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction of the authorised development or any other development necessary for the authorised development that takes place within the Order land, at any time prior to when the authorised development first becomes operational—~~

~~(a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and~~

~~(b) make provision as to the direction or priority of vehicular traffic on any road,~~

~~either at all times or at times, on days or during such periods as may be specified by the undertaker.~~

~~(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—~~

~~(a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and~~

~~(b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).~~

~~(3) Any prohibition, restriction or other provision made by the undertaker under article 11 or paragraph (1) of this article has effect as if duly made by, as the case may be—~~

~~(a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or~~

~~(b) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act.~~

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(a).

(4) In this article—

(a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and

(b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

(5) If the traffic authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(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 land, make openings into, and connections with, the watercourse, public sewer or drain.

(2) ~~(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) shall ~~must~~ be determined as if it were a dispute under section 106 of the Water Industry Act ~~1991(a) (right to communicate with public sewers).~~ 1991(b) (right to communicate with public sewers).

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

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

(a) ~~(a)~~ in accordance with plans approved by the person to whom the sewer or drain belongs, ~~but such approval shall ~~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 shall 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.~~

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

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

(a) 2004 c.18. There are amendments to this Act not relevant to this Order.

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

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

(6) (7)-This article does not authorise the entry into controlled waters of any matter whose entry or any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016(a).

(7) In this article—
discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources

Act 1991(b) (offences of polluting water).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning

of section 57 of the Harbours Act 1964(c) (interpretation) Natural Resources Wales, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

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

Protective work to buildings

15.—(1) Subject to the following provisions of this article, the undertaker may at its own

expense carry out such protective works to any building lying within the Order limits as the

undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of

the authorised project; or

(b) after the completion of that part of the authorised project in the vicinity of the building at

any time up to the end of the period of 5 years beginning with the day on which that part

of the authorised project is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the

undertaker may enter and survey any building falling within paragraph (1) and any land within its

curtilage.

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

(a) enter the building and any land within its curtilage; and

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments

to this section which are not relevant to this Order.

(a) S.I. 2016/1154.

(b) 1991 c.57 as amended by S.I. 2009/3104.

~~(b) 1991 c.57. 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) of Part 1 of Schedule 21 to S.I. 2007/3538.~~

~~(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.~~

~~—11~~

~~(b) where the works cannot be carried out reasonably conveniently without entering land~~

~~which is adjacent to the building but outside its curtilage, enter the adjacent land (but not~~

~~any building erected on it).~~

~~(5) Before exercising—~~

~~(a) a right under paragraph (1) to carry out protective works to a building;~~

~~(b) a right under paragraph (3) to enter a building and land within its curtilage;~~

~~(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or~~

~~(d) a right under paragraph (4)(b) to enter land;~~

~~the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the~~

~~building or land not less than 14 days' notice of its intention to exercise that right and, in a case~~

~~falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.~~

~~(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the~~

~~building or land concerned may, by serving a counter notice within the period of 10 days~~

~~beginning with the day on which the notice was served, require the question whether it is~~

~~necessary or expedient to carry out the protective works or to enter the building or land to be~~

~~referred to arbitration under article 42 (arbitration).~~

~~(7) The undertaker shall compensate the owners and occupiers of any building or land in relation~~

~~to which rights under this article have been exercised for any loss or damage arising to them by~~

~~reason of the exercise of those rights.~~

~~(8) Where—~~

~~(a) protective works are carried out under this article to a building; and~~

~~(b) within the period of 5 years beginning with the day on which the part of the authorised~~

~~project carried out in the vicinity of the building is first opened for use it appears that the~~

~~protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project,~~

~~the undertaker shall compensate the owners and occupiers of the building for any loss or damage~~

~~sustained by them.~~

~~(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation~~

~~under section 10(2) of the 1965 Act (compensation for injurious affection):~~

~~(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of~~

~~dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation):~~

~~(11) In this article “protective works” in relation to a building means—~~

~~(a) underpinning, strengthening and any other works the purpose of which is to prevent~~

~~damage which may be caused to the building by the carrying out, maintenance or use of~~

~~the authorised project; and~~

~~(b) any works the purpose of which is to remedy any damage which has been caused to the~~

~~building by the carrying out, maintenance or use of the authorised project.~~

~~Authority to survey and investigate the land~~

Authority to survey and investigate the land

~~17.16.—(1)~~ (1) The undertaker may for the purposes of this Order enter on any land shown within the Order ~~limits or~~ land or on any land which may be affected by the authorised ~~project~~ development and—

(a) ~~(a)~~ survey or investigate the land;

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

(c) ~~(e)~~ without prejudice to the generality of ~~sub-paragraph sub-paragraph~~ (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and

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

~~12~~

~~(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.~~

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

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

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

(a) ~~(a)~~ shall~~must~~, if so required on entering the land, produce written evidence of their authority to do so; and

~~(b) may take with them such vehicles and equipment as are necessary to carry out the survey~~

~~or investigation or to make the trial holes.~~

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

~~(a) (a) in land located within the highway boundary without the consent of the highway authority; or~~

~~(b) (b) in a private street without the consent of the street authority.~~

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

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

Removal of human remains

18.—(1) In this article “the specified land” means the Order land.

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

~~but such consent shall not be unreasonably withheld.~~

~~(5) The undertaker shall 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, Part 1 (determination of questions of disputed~~

~~compensation) of the 1961 Act.~~

~~Removal of human remains~~

~~17.—(1) In this article “the specified land” means [insert description of the land].~~

~~(2) Before the undertaker carries out any development or works which will or may disturb any~~

~~human remains in the specified land it shall remove those human remains from the specified land,~~

~~or cause them to be removed, in accordance with the following provisions of this article.~~

~~(3) (3) Before any such remains are removed from the specified land the undertaker shall give~~
must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

notice of the intended removal, describing the specified land and stating the general effect of the

following provisions of this article, by—

~~(a) (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and~~

~~(b) (b) displaying a notice in a conspicuous place on or near to the specified land.~~

~~(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3)~~

~~the undertaker shall send a copy of the notice to [insert relevant local authority].~~

~~(5) At any time within 56 days after the first publication of a notice under paragraph (3) any~~

~~person who is a personal representative or relative of any deceased person whose remains are~~

~~interred in the specified land may give notice in writing to the undertaker of that person's intention~~

~~to undertake the removal of the remains.~~

~~(6) Where a person has given notice under paragraph (5), and the remains in question can be~~

~~identified, that person may cause such remains to be—~~

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

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

(a) removed and re-interred ~~re-interred~~ in any burial ground or cemetery in which burials may legally take place; or

~~(b) removed to, and cremated in, any crematorium;~~

~~and that person shall, as soon as reasonably practicable after such re-interment or cremation;~~

~~provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).~~

~~(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the~~

~~personal representative or relative as that person claims to be, or that the remains in question can~~

~~be identified, the question shall be determined on the application of either party in a summary~~

~~manner by the county court, and the court may make an order specifying who shall remove the~~

~~remains and as to the payment of the costs of the application.~~

~~(8) The undertaker shall pay the reasonable expenses of removing and re-interring or cremating~~

~~the remains of any deceased person under this article.~~

~~13~~

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

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

(9) If—

- (a) ~~(a)~~ within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) ~~(b)~~ such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) ~~(c)~~ within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) ~~(d)~~ it is determined that the remains to which any such notice relates cannot be identified, ~~subject to paragraph (10) the undertaker shall remove the remains and cause them to be re-interred~~

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves ~~shall be re-interred~~ must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain. ~~in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.~~

(10) ~~(10)~~ If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker ~~shall~~ must comply with any reasonable request that person may make in relation to the removal and ~~re-interment~~ re-interment or cremation of the remains.

~~(11) On the re-interment or cremation of any remains under this article—~~

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

(a) ~~(a)~~ a certificate of ~~re-interment~~ re-interment or cremation ~~shall~~ must be sent by the undertaker to the Registrar General by the undertaker giving the date of ~~re-interment~~ re-interment or cremation and identifying the place from which the remains were removed and the place in which they were ~~re-interred~~ re-interred or cremated; and ~~or cremated; and~~

(b) ~~(b)~~ a copy of the certificate of ~~re-interment~~ re-interment or cremation and the record mentioned in paragraph (9) ~~shall~~ must be sent by the undertaker to ~~[insert relevant local authority]~~ the relevant planning authority.

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

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court. ~~mentioned in paragraph (4).~~

~~(12) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.~~

~~(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.~~

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

(a) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2 (January 1, 2015; substitution has effect subject to transitional and saving provisions specified in SI 2014/2077 Sch.1 paras 1 and 2).

PART 5
POWERS OF ACQUISITION

Compulsory acquisition of land
~~accordance with this article.~~
Compulsory acquisition of land

~~19.~~~~18.~~~~(1)~~ (1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) This article is subject to article 23 (Compulsory acquisition of rights etc.), article 26 (acquisition of subsoil only) and article 29 (Temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

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

(a) paragraph 8(3) is not incorporated; and

~~the authorised project [or to facilitate, or is incidental, to it][or is required as replacement land].~~

~~(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008~~

~~Act is served or the date on which the Order land, or any part of it, is vested in the undertaker,~~

~~whichever is the later, that land or that part of it which is vested (as the case may be) shall be~~

~~discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) Any person who suffers loss by the extinguishment or suspension of any private right of way~~

~~under this article shall be entitled to compensation to be determined, in case of dispute, under Part~~

~~1 of the 1961 Act.~~

~~(4) This article is subject to article 25 (acquisition of land limited to subsoil lying more than 9~~

~~metres beneath surface) and article 28 (temporary use of land for carrying out the authorised~~

~~project).~~

~~(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.~~
~~14~~

Compulsory acquisition of land—incorporation of the mineral code

19. ~~[Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(a)(minerals) [is/are]~~

~~incorporated in this Order subject to the modifications that—~~

~~(a) paragraph 8(3) is not incorporated;~~

(b) ~~(b)~~ for “the acquiring authority” substitute “the undertaker”~~;~~

Statutory authority to override easements and other rights

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

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

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

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

Time limit for exercise of authority to acquire land compulsorily

caused by the carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.

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

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

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

Time limit for exercise of authority to acquire land compulsorily

~~22.20.—(1) —(1)~~ After the end of the period of ~~[5 years]~~ beginning on the day on which this Order is made ~~5 years~~ beginning on the day on which this Order is made—
~~made—~~

- (a) ~~(a)~~ no notice to treat ~~shall~~ is to be served under Part 1 of the 1965 Act; and
- (b) ~~(b)~~ no declaration ~~shall~~ may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 ~~—(a)~~ as applied by article 23–25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) ~~(b)~~.

(2) ~~(2)~~ The authority conferred by article 28–29 (temporary use of land for carrying out the authorised ~~project~~ development) ~~shall~~ must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc.

23.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In respect of such parts of the Order land that are edged in red and shaded blue on the land plans the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights and impose the restrictions described in the book of reference and shown on the land plans.

(a) 1981 c. 66. Section 4 was amended by sections 184, 185 and paragraph 2 of Schedule 18(1) to, the Housing and Planning Act 2016 (c.22).

(3) Subject to section 8 of the 1965 Act (provisions as to divided land), where the undertaker creates or acquires a right over land or imposes a restriction under paragraph (1) or (2), the undertaker is not to be required to acquire a greater interest in that land.

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

(5) In any case where the acquisition of new rights or the imposition of a restriction under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictions to the statutory undertaker in question.

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

(7) Subject to the modifications set out in Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

Private rights

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

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

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

(a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

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

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

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

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

~~paragraph shall prevent the undertaker remaining in possession of land after the end of that period;~~

~~if the land was entered and possession was taken before the end of that period.~~

Compulsory acquisition of rights

~~21.— (1) The undertaker may acquire compulsorily the existing rights and create and acquire~~

~~compulsorily the new rights described in the book of reference and shown on the {insert name}~~

~~plan.~~

~~(2) As from the date on which a compulsory acquisition notice is served or the date on which~~

~~any new right is vested in the undertaker, whichever is the later, the land over which any new~~

~~rights is acquired shall be discharged from all rights, trusts and incidents to which it was~~

~~previously subject so far as their continuance would be inconsistent with the exercise of that new~~

~~right.~~

~~(3) Subject to section 8 of the 1965 Act, as substituted by article 26 (acquisition of part of~~

~~certain properties), where the undertaker acquires an existing right over land under paragraph (1),~~

~~the undertaker shall not be required to acquire a greater interest in that land.~~

~~(4) Any person who suffers loss as a result of the extinguishment or suspension of any private~~

~~right of way under this article shall be entitled to compensation to be determined, in ease of~~

~~dispute, under Part 1 of the 1961 Act.~~

Private rights of way

~~22.— (1) Subject to the provisions of this article, all private rights of way over land subject to~~

~~compulsory acquisition under this Order shall be extinguished—~~

~~(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by~~

~~agreement; or~~

~~(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act~~

~~(power of entry),~~

~~whichever is the earlier.~~

~~(a) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of~~

~~Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of~~

~~Schedule was amended by section 46 of the~~

~~Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~(b) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning~~

~~(Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~-15~~

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

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

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

~~(5) This article does not apply in relation to any right of way to which section 138 of the 2008~~

~~Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.~~

~~(7) (6) Paragraphs (1) to (3) shall have effect subject to—~~

~~(a) any notice given by the undertaker before—~~

- ~~(a) any notice given by the undertaker before—~~
- ~~(i) (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land,~~
 - ~~(ii) (ii) the undertaker's appropriation of it,~~
 - ~~(iii) (iii) the undertaker's entry onto it, or~~
 - ~~(iv) (iv) the undertaker's taking temporary possession of it,~~
- that any or all of those paragraphs ~~shall are~~ not to apply to any right ~~of way~~ specified in the notice; and

~~(b) (b) any agreement made at any time between the undertaker and the person in or to whom the right of way or restriction in question is vested ~~or~~ belongs or benefits.~~

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

~~(a) (a) is made with a person in or to whom the right of way is vested or belongs; and~~

~~(b) (b) is expressed to have effect also for the benefit of those deriving title from or under that person,~~

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

~~Application of the Compulsory Purchase (Vesting Declarations) Act 1981~~

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

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

~~25.23.—(1) (1) The Compulsory Purchase (Vesting Declarations) Act 1981 (a) shall apply as if this applies as if this Order were a compulsory purchase order.~~
Order were a compulsory purchase order.

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

~~(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—~~
~~“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—~~
~~(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and~~
~~(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~—16~~

~~(b) published in a local newspaper circulating in the area in which the land is situated.”~~

~~(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.~~

~~(5) In that section, for subsections (5) and (6) there shall be substituted—~~

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

~~(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or~~

~~(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”~~

~~(3) (6) In section Section 5 (earliest date for execution of declaration)—declaration is omitted.~~

~~(4) Section 5A (time limit for general vesting declaration) is omitted.~~

~~(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and~~

~~(b) subsection (2) shall be omitted.~~

~~(5) In section 5B (extension of time limit during challenge)—~~

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 201[X].

~~(6)~~ ~~(7)~~-In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” ~~shall be~~ are omitted.

(7) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

~~(8)~~ ~~(8)~~-References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 ~~shall~~ must be construed as references to that Act as applied by section 125 of the 2008 Act ~~to the~~ (as modified by article 27 (application of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

~~compulsory acquisition of land under this Order.~~

~~Acquisition of subsoil only~~

~~26.24.—(1)~~ ~~(1)~~ The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article ~~18-19~~ (compulsory acquisition of land) and paragraph (1) of article 23 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.

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

~~(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 27 (application of part 1 of the Compulsory Purchase Act 1965) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.~~

Application of Part 1 of the Compulsory Purchase Act 1965

~~27.—(1)~~ Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

~~(2) In section 4A(1) (extension of time limit during challenge)—~~

~~(a) for “section 23 of~~

~~(compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.~~

~~(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph~~

~~(1), the undertaker shall not be required to acquire an interest in any other part of the land.~~

~~(3) Paragraph (2) shall not prevent article 26 (acquisition of part of certain properties) from~~

~~applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a~~

~~house, building or manufactory.~~

~~Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~

~~25.—(1) This article applies to the land specified in Schedule F (land of which only subsoil~~

~~more than 9 metres beneath surface may be acquired).~~

~~(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 18 (compulsory acquisition of land) so much of, or such rights in, the~~

~~subsoil of the land as may be required for the purposes of the authorised project.~~

~~(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this~~

~~article applies, the undertaker shall not be required to acquire a greater interest in the land or an~~

~~interest in any other part of it.~~

~~(4) References in this article to the subsoil of land are references to the subsoil lying more than 9~~

~~metres beneath the level of the surface of the land; and for this purpose “level of the surface of the~~

~~land” means—~~

~~(a) in the case of any land on which a building is erected, the level of the surface of the~~

~~ground adjoining the building;~~

~~(b) in the case of a watercourse or other water area, the level of the surface of the ground~~

~~nearest to it which is at all times above water level; or~~

~~(c) in any other case, ground surface level.~~

~~17~~

~~Acquisition of part of certain properties~~

~~26.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as~~

~~divided land) (as applied by section 125 of the 2008 Act) where—~~

~~(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in~~

~~respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”);~~

~~and~~

~~(b) a copy of this article is served on the owner with the notice to treat.~~

~~(2) In such a case, the owner may, within the period of 21 days beginning with the day on which~~

~~the notice was served, serve on the undertaker a counter notice objecting to the sale of the land~~

~~subject to the notice to treat which states that the owner is willing and able to sell the whole (“the~~

~~land subject to the counter notice”).~~

~~(3) If no such counter notice is served within that period, the owner shall be required to sell the~~

~~land subject to the notice to treat.~~

~~(4) If such a counter notice is served within that period, the question whether the owner shall be~~

~~required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to~~

~~take the land subject to the counter notice, be referred to the tribunal.~~

~~(5) If on such a reference the tribunal determines that the land subject to the notice to treat can~~

be taken—

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

~~(b) where the land subject to the notice to treat consists of a house with a park or garden,~~

~~without material detriment to the remainder of the land subject to the counter notice and~~

~~without seriously affecting the amenity and convenience of the house, the owner shall be required to sell the land subject to the notice to treat.~~

~~(6) If on such a reference the tribunal determines that only part of the land subject to the notice~~

~~to treat can be taken—~~

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

~~(b) where the land subject to the notice to treat consists of a house with a park or garden,~~

~~without material detriment to the remainder of the land subject to the counter notice and~~

~~without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.~~

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

~~(a) the land subject to the notice to treat cannot be taken without material detriment to the~~

~~remainder of the land subject to the counter notice; but~~

~~(b) the material detriment is confined to a part of the land subject to the counter-notice;~~

~~the notice to treat shall be deemed to be a notice to treat for the land to which the material~~

~~detriment is confined in addition to the land already subject to the notice, whether or not the~~

~~additional land is land which the undertaker is authorised to acquire compulsorily under this~~

~~Order.~~

~~(8) If the undertaker agrees to take the land subject to the counter notice, or if the tribunal~~

~~determines that—~~

~~(a) none of the land subject to the notice to treat can be taken without material detriment to~~

~~the remainder of the land subject to the counter notice or, as the case may be, without material detriment to the remainder of the land subject to the counter notice and~~

~~without~~

~~seriously affecting the amenity and convenience of the house; and~~

~~(b) the material detriment is not confined to a part of the land subject to the counter-notice;~~

~~the notice to treat shall be deemed to be a notice to treat for the land subject to the counter notice~~

~~whether or not the whole of that land is land which the undertaker is authorised to acquire~~

~~compulsorily under this Order.~~

~~18~~

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

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

~~Rights under or over streets~~

~~27.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air space over, any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air space for those purposes or any other purpose ancillary to the authorised project.~~

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

~~right in the street.~~ the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and

~~(b) for “the three year period specified in section 4” substitute “the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 201[X].”~~

~~(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 22 (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 201[X].”~~

~~(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—~~

~~(a) omit paragraphs 1(2) and 14(2); and~~

~~(b) at the end insert—~~

~~“PART 4~~

~~INTERPRETATION~~

~~30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 29 (temporary use of land for carrying out the authorised development) or article 30 (temporary use of land for maintaining the authorised development) of the Abergelli Power Gas Fired Generating Station Order 201[X].”~~

Rights under or over streets

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

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

(3) ~~(3)~~ Paragraph (2) shall ~~does~~ not apply in relation to—

(a) ~~(a)~~ any subway or underground building; or

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

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

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

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.
~~under Part I of the 1961 Act.~~

~~(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker~~

~~to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of~~

~~measures of which the allowable costs are to be borne in accordance with that section.~~

Temporary use of land ~~for~~ in connection with the carrying out of the authorised project development

~~29,28.—(1) —(1) The undertaker may, in connection with the carrying out of the authorised project—~~ in connection with the carrying out of the authorised development—

(a) enter on and take possession of—

(i) so much of the land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;

(ii) any other Order land in respect of which no notice of entry has been served under section 1.1 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);

(b) remove any buildings, fences, debris and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any works specified in relation to that land in column (3) of Schedule 9 (land of which temporary possession may be taken), or any other mitigation works.

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

~~(a) enter on and take temporary possession of the land specified in columns (1) and (2) of~~

~~Schedule G (land of which temporary possession may be taken) for the purpose specified~~

~~in relation to that land in column (3) of that Schedule relating to the part of the authorised~~

~~project specified in column (4) of that Schedule;~~

~~(b) remove any buildings and vegetation from that land; and~~

~~(c) construct temporary works (including the provision of means of access) and buildings on that land.~~

~~(2) Not less than 14 days before entering on and taking temporary possession of land under this~~

~~article the undertaker shall serve notice of the intended entry on the owners and occupiers of the~~

~~land.~~

~~(3) The undertaker may not, without the agreement of the owners of the land, remain in~~

~~possession of any land under this article after the end of the period of one year beginning with the~~

~~date of completion of the part of the authorised project specified in relation to that land in column~~

~~(4) of Schedule G.~~

~~(4) Before giving up possession of land of which temporary possession has been taken under~~

~~this article, the undertaker shall remove all temporary works and restore the land to the reasonable~~

~~satisfaction of the owners of the land; but the undertaker shall not be required to replace a building~~

~~removed under this article.~~

~~19~~

~~(5) The undertaker shall pay compensation to the owners and occupiers of land of which~~

~~temporary possession is taken under this article for any loss or damage arising from the exercise in~~

~~relation to the land of the provisions of any power conferred by this article.~~

~~(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the~~

~~amount of the compensation, shall be determined under Part 1 of the 1961 Act.~~

~~(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of~~

~~the 1965 Act (further provisions as to compensation for injurious affection) or under any other~~

~~enactment in respect of loss or damage arising from the carrying out of the authorised project,~~

~~other than loss or damage for which compensation is payable under paragraph (5).~~

~~(8) The undertaker may not compulsorily acquire under this Order the land referred to in~~

~~paragraph (1) except that the undertaker shall not be precluded from—~~

~~(a) acquiring new rights over any part of that land under article 21 (compulsory acquisition~~

~~of rights); or~~

~~(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 24~~

~~(acquisition of subsoil only) or in accordance with article 25 (acquisition of land limited~~

~~to subsoil lying more than 9 metres beneath surface).~~

~~(9) Where the undertaker takes possession of land under this article, the undertaker shall not be~~

~~required to acquire the land or any interest in it.~~

~~(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to~~

~~the temporary use of land pursuant to this article to the same extent as it applies to the compulsory~~

~~acquisition of land under this Order by virtue of section 125 of the 2008 Act~~

~~(application of~~

~~compulsory acquisition provisions).~~

~~Temporary use of land for maintaining authorised project~~

~~29.— (1) Subject to paragraph (2), at any time during the maintenance period relating to any part~~

~~of the authorised project, the undertaker may—~~

~~(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project;~~

~~and~~

~~(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.~~

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

~~(a) any house or garden belonging to a house; or~~

~~(b) any building (other than a house) if it is for the time being occupied.~~

~~(3) Not less than 28 days before entering on and taking temporary possession of land under this~~

~~article the undertaker shall serve notice of the intended entry on the owners and occupiers of the~~

~~land.~~

~~(3) (4) The undertaker may only not, without the agreement of the owners of the land, remain in possession of any land under this article for so long as may~~article—~~~~

~~(a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of construction of the authorised development; or~~

~~(b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of construction of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.~~

~~(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has~~

otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article.

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

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

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

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(9) Nothing in this article precludes the undertaker from—

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in part 1 of the book of reference under article 23 (compulsory acquisition of rights etc.); or

(b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 26 (acquisition of subsoil only) or article 28 (rights under or over streets).

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

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

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9 (land of which temporary possession may be taken).

(13) The provisions of the Neighbourhood Planning Act 2017(a) do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development necessary for the authorised development within the Order land.

Temporary use of land for maintaining the authorised development

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

(a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

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

(a) 2017 c.20.

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

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

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

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

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

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

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

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

~~(9) Where the undertaker takes possession of land under this article, the undertaker shall not be~~

~~required to acquire the land or any interest in it.~~

~~(9) Where the undertaker takes possession of land under this article, the undertaker shall not be~~

~~required to acquire the land or any interest in it.~~

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

~~the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).~~

(11) (11) In this article "the maintenance period" means the period of 5 years beginning with the date of final commissioning except where the authorised development is landscaping where "the maintenance period" means such period as set out in the landscaping plan which is approved by the relevant planning authority pursuant to requirement 3 beginning with the date on which that part of the landscaping is completed.

(12) The provisions of the Neighbourhood Planning Act 2017(a) do not apply insofar as they relate to temporary possession of land under this article in connection with the beginning with the date on which that part of the authorised project is first opened for use.

Special category land

30.—(1) The special category land shall not vest in the undertaker until the undertaker has

acquired the replacement land and [insert name of relevant body] has certified that a scheme for the provision of the replacement land as [common/open space/fuel or field garden allotment] has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in

[insert name of relevant body] subject to the same rights, trusts and incidents as attached to the

special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

“the special category land” means the land identified as forming part of a common, open

space, or fuel or field garden allotment in the book of reference and on the plan entitled

“Special Category Land Plan” attached to the land plan, which may be acquired compulsorily

under this Order and for which replacement land is to be provided; and

“the replacement land” means the land identified in the book of reference and on the plan

entitled “Replacement Land Plan” attached to the land plan.

Statutory undertakers

31. The undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan

within the limits of the land to be acquired and described in the book of reference;

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the [insert name] plan and described in the book of reference; and

(c) acquire compulsorily the new rights over land belonging to statutory undertakers shown

on the [insert name] plan and described in the book of reference.

Apparatus and rights of statutory undertakers in stopped up streets

32.—(1) Where a street is stopped up under article 9 (stopping up of streets), any statutory

utility whose apparatus is under, in, on, along or across the street shall have the same powers and

rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not

[\(a\) 2017 c.20.](#)

been made.

~~(2) Where a street is stopped up under article 9, any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—~~

~~(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it;~~

~~or
-21~~

~~(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).~~

~~(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—~~

~~(a) the execution of the relocation works required in consequence of the stopping up of the street; and~~

~~(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.~~

~~(4) If in the course of the execution of relocation works under paragraph (2)—~~

~~(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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 to be necessary, then, if it involves cost in the execution of the relocation works 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 paragraph, would be payable to the statutory utility by~~

~~virtue of paragraph (3) shall be reduced by the amount of that excess.~~

~~(5) For the purposes of paragraph (4)—~~

~~(a) an extension of apparatus to a length greater than the length of existing apparatus shall~~

~~not be treated as a placing of apparatus of greater dimensions than those of the existing~~

~~apparatus; and~~

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

~~(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.~~

~~(7) Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway~~

~~works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act;~~

~~but instead—~~

~~(a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and~~

~~(b) the allowable costs shall be borne by the undertaker and the statutory utility in such~~

~~proportions as may be prescribed by any such regulations.~~

~~(8) In this article—~~

~~“apparatus” has the same meaning as in Part 3 of the 1991 Act;~~

~~“relocation works” means work executed, or apparatus provided, under paragraph (2); and~~

~~“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).~~

~~(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.~~

~~22~~

~~Recovery of costs of new connections, maintenance of the authorised development and other development necessary for the authorised development within the Order land.~~

Statutory undertakers

31. Subject to the provisions of Schedule 11 (protective provisions), the undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers within the Order land;

(b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to statutory undertakers on, under, over or within the Order land; and

(c) create and acquire compulsorily the rights and/or impose restrictions over any Order land belonging to statutory undertakers.

Apparatus and rights of statutory undertakers in streets

32. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary prohibition or restriction of use of streets) or where a street is stopped up under article 12 (stopping up of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 11 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

33. ~~33.—(1) —(1)~~ Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

~~provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.~~

(2) ~~(2)~~ Paragraph (1) shall ~~does~~ not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31, ~~(statutory undertakers)~~ any person who is—

(a) ~~(a)~~ the owner or occupier of premises the drains of which communicated with ~~that the~~ sewer; or

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

~~(3) This article shall not have effect in relation to apparatus to which article 32 (apparatus and~~

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

(3) This article does not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in ~~stopped-up streets) or Part 3 of the 1991 Act applies streets) or Part 3 of the 1991 Act applies.~~

(4) In this article—

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

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

Funding

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

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

(2) The provisions are—

- (a) article 19 (compulsory acquisition of land);
- (b) article 23 (compulsory acquisition of rights etc.);
- (c) article 24 (private rights);
- (d) article 26 (acquisition of subsoil only);
- (e) article 28 (rights under or over streets);
- (f) article 29 (temporary use of land in connection with the carrying out of the authorised development);
- (g) article 30 (temporary use of land for maintaining the authorised development); and
- (h) article 31 (statutory undertakers).

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

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

PART 6 **OPERATIONS**

Felling or lopping of trees and removal of hedgerows

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

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

(a) 2003 c. 21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations 2011/1210

(2) In carrying out any activity authorised by paragraph (1) and paragraph (4), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of the authorised development subject to paragraph (2), remove any hedgerows within the Order land that may be required (a) for the purposes of carrying out the authorised development; and (b) remove the important hedgerows as are within the Order land and specified in Schedule 10 (Removal of Hedgerows).

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

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

~~(4) In this paragraph—~~

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

~~"public utility undertaker" has the same meaning as in the 1980 Act.~~

Railway and navigation undertakings

~~34.—(1) Subject to the following provisions of this article, the undertaker may not under article~~

~~8 (street works) break up or open a street where the street, not being a highway maintainable at~~

~~public expense (within the meaning of the 1980 Act)—~~

~~(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or~~

~~(b) forms part of a level crossing belonging to any such undertakers or to such an authority or~~

~~to any other person;~~

~~except with the consent of the undertakers or authority or, as the case may be, of the person to~~

~~whom the level crossing belongs.~~

~~(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works;~~

~~within the meaning of Part 3 of the 1991 Act.~~

~~(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable~~

~~conditions as may be specified by the person giving it but shall not be unreasonably withheld.~~

~~(4) In this paragraph "navigation authority" means any person who has a duty or power under~~

~~any enactment to work, maintain, conserve, improve or control any canal or other inland~~

~~navigation, navigable river, estuary or harbour.~~

Application of landlord and tenant law

(a) S.I. 1997/1160.

~~36.35.—(1)~~ (1) This article applies to—

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

~~23~~

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

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

(a) ~~exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter; obligations of the parties to any lease granted by or under any such agreement so as to—~~

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

(b) ~~(b)~~ confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

~~(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.~~

(c) ~~restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.~~

Operational land for the purposes of the 1990 Act

~~37.36.~~ Development consent granted by this Order ~~shall~~ is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if 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 that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under~~

(a) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16). Section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(a); or

- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

Protective provisions

39. Schedule 11 (protective provisions) has effect.

Certification of plans etc.

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

- (a) the book of reference;
- (b) design principles statement;
- (c) the environmental statement;
- (d) the land plans;
- (e) the rights of way, streets and access plan; and
- (f) the works plans;
- (g) outline construction environment management plan;
- (h) outline construction traffic management plan;
- (i) outline landscape and ecological mitigation strategy;
- (j) outline lighting strategy;
- (k) outline construction staff travel plan;
- (l) outline surface water management plan;
- (m) outline drainage strategy;
- (n) flood consequences assessment; and
- (o) hedgerow plan.

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

~~operational land for the purposes of that Act).~~

~~Deemed consent under section 34 of the Coast Protection Act 1949~~

~~37. The undertaker is granted deemed consent under section 34 of the Coast Protection Act~~

~~1949(a) to carry out the works described in Schedule H, subject to the requirements set out in that~~

~~Schedule.~~

~~Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~

(a) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3), paragraphs 33 and 35 of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the Electricity Act 1989 (c.29); Section 61 was amended by section 133 and Schedule 7 to the Building Act 1984 (c.55), Schedule 24 to the Environment Act 1995 (c.25), and section 162(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.

~~38. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(b) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.~~

~~Felling or lopping of trees~~

~~39.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the~~

~~authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

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

~~damage arising from such activity.~~

~~(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the~~

~~amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

~~(a) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other~~

~~amendments to the 1949 Act which are not relevant to this Order.~~

~~(b) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the~~

~~Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this~~

~~Order.~~

~~24~~

~~Trees subject to tree preservation orders~~

~~40.—(1) The undertaker may fell or lop any tree described in Schedule J [and identified on the~~

~~{insert name} plan, or cut back its roots if it reasonably believes it to be necessary in order to do so~~

~~to prevent the tree or shrub—~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the~~

~~authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

~~(2) In carrying out any activity authorised by paragraph (1)—~~

~~(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~

~~(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not~~

~~apply.~~

~~(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.~~

~~(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

~~Certification of plans etc~~

~~41.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to~~

~~the decision maker copies of—~~

~~(a) the book of reference;~~

~~(b) the land plan;~~

~~(c) the rights plan;~~

~~(d) the works plan;~~

~~(e) the sections; and~~

~~(f) any other plans or documents referred to in this Order,~~

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

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

Service of notices

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

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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

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

(a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body, and

(b) in any other case, the last known address of that person at that time of service.

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

(a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and

(b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(a) 1978 c.30. Section 7 was amended by section 144 and paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

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

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

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

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

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

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

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

Procedure in relation to certain approvals

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

(2) Any consent, agreement or approval given under paragraph (1) above may be given subject to conditions.

(3) Schedule 12 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements in Schedule 2 (requirements).

(4) Save for applications made pursuant to Schedule 12 (procedure for discharge of requirements), if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed with the undertaker in writing) it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) The procedure set out in paragraph 3 of Schedule 12 (procedure for discharge of requirements) has effect in relation to any refusal by an authority or an owner as referred to in paragraph (1) of this article to any consent, agreement or approval required under this Order, as if such a refusal were in respect of an application to discharge a requirement.

(6) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

contents of the document of which it is a copy.

Arbitration

~~43.42—(1)~~ Any difference under any provision of this Order, unless otherwise provided for, ~~shall is to~~ be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the [Secretary of State](#).

~~[insert appropriate body].~~

~~Schedule A~~

~~AUTHORISED PROJECT~~

~~Part 1~~

~~AUTHORISED DEVELOPMENT~~

~~[NOTE: This Part should describe as fully as possible the elements of the proposed project~~

~~(including any associated development), which are development for the purposes of section 32 of~~

~~the 2008 Act, for which development consent is sought. It should not include any elements of~~

~~development which would be authorised by specific provisions in the Order.]~~

~~25~~

~~Part 2~~

~~ANCILLARY WORKS~~

~~[NOTE: This Part should describe as fully as possible the ancillary works for which consent is~~

~~sought and which are not development within the meaning of section 32 of the 2008 Act and which~~

~~would not be the subject of a separate provision [article] in this Order.]~~

~~Schedule B~~

~~STREETS SUBJECT TO STREET WORKS~~

~~(1)(2)~~

~~Area Street subject to street works~~

~~Schedule C~~

~~STREETS TO BE STOPPED UP~~

~~Part 1~~

~~STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED~~

~~(1)(2)(3)(4)~~

~~Area Street to be stopped~~

~~up~~

~~Extent of stopping up New street to be~~

~~substituted~~

~~Part 2~~

~~STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED~~

~~(1)(2)(3)~~

~~Area Street to be stopped up Extent of stopping up~~

~~Schedule D~~

~~STREETS TO BE TEMPORARILY STOPPED UP~~

~~(1)(2)(3)~~

~~Area Street to be temporarily~~

~~stopped up~~

~~Extent of temporary stopping~~

~~up~~

~~Schedule E~~

~~ACCESS TO WORKS~~

~~(1)(2)~~

~~Area Description of access~~

~~-26~~

~~Schedule F~~

~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH
SURFACE MAY BE ACQUIRED~~

~~(1)(2)~~

~~Area Number of land shown on land plan~~

~~Schedule G~~

~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~

~~(1)(2)(3)(4)~~

~~Area Number of land shown~~

~~on land plan~~

~~Purpose for which~~

~~temporary possession~~

~~may be taken~~

~~Relevant part of the~~

~~Authorised project~~

~~Schedule H~~

~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~

~~[Insert details of deemed consent]~~

~~Schedule I~~

~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION
ACT 1985~~

~~[Insert details of deemed licence]~~

~~Schedule J~~

~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~

~~(1)(2)(3)~~

~~Type of tree Number[reference] of tree
shown on land plan~~

~~Work to be carried out~~

~~-SCHEDULE 2 Article 2~~

~~Model provisions for railways~~

~~CONTENTS~~

~~Preliminary~~

~~1. Interpretation~~

~~2. Incorporation of the Railway Clauses Acts~~

~~-27~~

(2) ³Should the Secretary of State fail to appoint an arbitrator under paragraph (1) within 14 days of the application, the referring party may refer to the Centre of Effective Dispute Resolution for appointment of an arbitrator.

Application and modification of legislative provisions

~~“Order land” means the land shown on the land plan which is within the limits of land to be~~

~~acquired and described in the book of reference;~~

~~(a) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation~~

~~Act 1991(c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential~~

Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(b) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1)(2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(c) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act

~~2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.~~
~~(d) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).~~
~~(e) 2008 c.29.~~

~~5~~

~~“the Order limits” means the limits shown on the works plan within which the authorised~~

~~project may be carried out;~~

~~“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land~~

~~Act 1981(a);~~

~~“relevant planning authority” means—~~

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~“rights plan” means the plan certified as the rights plan by the decision maker for the purposes of this Order;~~

~~“the sections” means the sections shown on the plan certified as the section drawings plan by~~

~~the decision maker for the purposes of this Order;~~

~~“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;~~

~~“street” means a street within the meaning of section 48 of the 1991 Act, together with land on~~

~~the verge of a street or between two carriageways, and includes part of a street;~~

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

~~“tree preservation order” has the meaning given in section 198 of the 1990 Act;~~

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

~~“undertaker” means the person who has the benefit of this Order in accordance with section~~

~~156 of the 2008 Act;~~

~~“waterecourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes;~~

~~sluices, sewers and passages through which water flows except a public sewer or drain; and~~

~~“the works plan” means the plan certified as the works plan by the decision maker for the purposes of this Order.~~

~~(2) References in this Order to rights over land include references to rights to do or to place and~~

~~maintain, anything in, on or under land or in the air space above its surface.~~

~~(3) All distances, directions and lengths referred to in this Order are approximate and distances~~

~~between points on a work comprised in the authorised project shall be taken to be measured along that work.~~

~~[NOTE: In the case of off-shore development, which is outside the area of any planning authority,~~

~~it will be necessary to identify another appropriate body as the relevant planning authority.]~~

~~Development consent etc. granted by the Order~~

~~2. Subject to the provisions of this Order and to the requirements in the Schedule (requirements)~~

~~attached to this Order the undertaker is granted—~~

~~(a) development consent for the authorised development; and~~

~~(b) consent for the ancillary works,~~

~~to be carried out within the Order limits.~~

~~(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation~~

~~Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~-6~~

~~Maintenance of authorised project~~

~~3. The undertaker may at any time maintain the authorised project, except to the extent that this~~

~~Order or an agreement made under this Order, provides otherwise.~~

~~Benefit of Order~~

~~4. Subject to article 5 (consent to transfer benefit of Order), the provisions of articles [] and []~~

~~[specify relevant articles] shall have effect solely for the benefit of [specify person, body or class~~

~~of person].~~

~~[NOTE: This article is required where provisions of the Order are specific to a named undertaker~~

~~or class of undertaker (see section 156(2) of the 2008 Act).]~~

~~Consent to transfer benefit of Order~~

~~5.— (1) The undertaker may, with the consent of the [specify person or body]—~~

~~(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 so agreed.~~

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

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

~~Application and modification of legislative provisions~~

~~6.—(1) Subject to the modifications set out in paragraph (2) the following provisions of the~~

~~[insert short title of the relevant Act] shall be incorporated in this Order—~~

~~(a) section[s] X [specify relevant section(s)].~~

~~(2) The modifications are: [insert relevant modifications].~~

~~(3) In construing the [insert short title of the relevant Act] as incorporated the following~~

~~expressions shall have the following meanings: [insert relevant expressions and definitions]~~

~~Defence to proceedings in respect of statutory nuisance~~

~~7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act~~

~~1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a~~

~~nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so~~

~~as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed,~~

~~under section 82(2) of that Act if—~~

~~(a) the defendant shows that the nuisance—~~

~~(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given~~

~~(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.~~

~~7~~

~~under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(a); or~~

~~(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or~~

~~(b) the defendant shows that the nuisance—~~

~~(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25;~~

~~or~~

~~(ii) is a consequence of the use of the authorised project and that it cannot reasonably be~~

avoided:

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

~~Street works~~

~~8.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule B (streets subject to street works) as is within the Order limits and may—~~

- ~~(a) break up or open the street, or any sewer, drain or tunnel under it;~~
- ~~(b) tunnel or bore under the street;~~
- ~~(c) place apparatus 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 subparagraphs (a), (b), (c) and (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) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).~~

~~(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.~~

~~[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]~~

~~Stopping up of streets~~

~~9.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.~~

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

~~8~~

~~(2) No street specified in columns (1) and (2) of Part 1 of Schedule C (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—~~

~~(a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or~~

~~(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).~~

~~(3) No street specified in columns (1) and (2) of Part 2 of Schedule C (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.~~

~~(4) The condition referred to in paragraph (3) is that—~~

~~(a) the undertaker is in possession of the land; or~~

~~(b) there is no right of access to the land from the street concerned; or~~

~~(c) there is reasonably convenient access to the land otherwise than from the street concerned; or~~

~~(d) the owners and occupiers of the land have agreed to the stopping up.~~

~~(5) Where a street has been stopped up under this article—~~

~~(a) all rights of way over or along the street so stopped up shall be extinguished; and~~

~~(b) the undertaker may appropriate and use for the purposes of the authorised project so~~

~~much of the site of the street as is bounded on both sides by land owned by the undertaker.~~

~~(6) Any person who suffers loss by the suspension or extinguishment of any private right of way~~

~~under this article shall be entitled to compensation to be determined, in case of dispute, under Part~~

~~1 of the 1961 Act.~~

~~(7) This article is subject to article 32 (apparatus etc. of statutory undertakers).
Public rights of way~~

~~10.—(1) With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the public right of way (being a [insert one of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.~~

~~(2) With effect from [that same date] [insert later date] an alternative section of [insert description of right of way of that same type] as marked in [green] between the points [C] and [D] on the rights plan is created.~~

~~(3) In this article—~~

~~“implementation plan” means the written plan agreed between the undertaker and the local~~

~~highway authority for creation of the agreed alternative right of way to the defined standard;~~

~~and~~

~~“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.~~

~~Temporary stopping up of streets~~

~~11.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may~~

~~temporarily stop up, alter or divert any street and may for any reasonable time—~~

~~—~~

~~(a) divert the traffic from the street; and~~

~~(b) subject to paragraph (2), prevent all persons from passing along the street.~~

~~(2) The undertaker shall provide reasonable access for pedestrians going to or from premises~~

~~abutting a street affected by the temporary stopping up, alteration or diversion of a street under~~

~~this article if there would otherwise be no such access.~~

~~(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up,~~

~~alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily~~

~~stopped up) to the extent specified, by reference to the letters and numbers shown on the works~~

~~plan, in column (3) of that Schedule.~~

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

~~(a) any street specified as mentioned in paragraph (3) without first consulting the street~~

~~authority; and~~

~~(b) any other street without the consent of the street authority which may attach reasonable~~

~~conditions to any consent.~~

~~(5) Any person who suffers loss by the suspension of any private right of way under this article~~

~~shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961~~

~~Act.~~

~~Access to works~~

~~12. The undertaker may, for the purposes of the authorised project —
(a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule E (access to works); and
(b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.~~

~~Agreements with street authorities~~

~~13.— (1) A street authority and the undertaker may enter into agreements with respect to—~~

~~(a) the construction of any new street including any structure carrying the street over or~~

~~under a [insert description of development] authorised by this Order;~~

~~(b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a~~

~~[insert description of development];~~

~~(c) any stopping up, alteration or diversion of a street authorised by this Order; or~~

~~(d) the carrying out in the street of any of the works referred to in article 8(1) (street works).~~

~~(2) Such an agreement may, without prejudice to the generality of paragraph (1)—~~

~~(a) make provision for the street authority to carry out any function under this Order which~~

~~relates to the street in question;~~

~~(b) include an agreement between the undertaker and street authority specifying a reasonable~~

~~time for the completion of the works; and~~

~~(c) contain such terms as to payment and otherwise as the parties consider appropriate.~~

~~Discharge of water~~

~~14.— (1) The undertaker may use any watercourse or any public sewer or drain for the drainage~~

~~of water in connection with the carrying out or maintenance of the authorised project 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.~~

~~10~~

~~(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) shall be determined as if it were a dispute under~~

~~section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).~~

~~(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain~~

~~except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.~~

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

~~(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but~~

~~such approval shall not be unreasonably withheld; and~~

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

~~(5) The undertaker shall 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.~~

~~(6) The undertaker shall take such steps as are reasonably practicable to secure that any water~~

~~discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be~~

~~practicable from gravel, soil or other solid substance, oil or matter in suspension.~~

~~(7) This article does not authorise the entry into controlled waters of any matter whose entry or~~

~~discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources~~

~~Act 1991(b) (offences of polluting water).~~

~~(8) In this article—~~

~~(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning~~

~~of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board,~~

~~a joint planning board, a local authority, a National Park Authority, a sewerage undertaker~~

~~or an urban development corporation; and~~

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

~~Protective work to buildings~~

~~15.— (1) Subject to the following provisions of this article, the undertaker may at its own~~

~~expense carry out such protective works to any building lying within the Order limits as the~~

~~undertaker considers necessary or expedient.~~

~~(2) Protective works may be carried out—~~

~~(a) at any time before or during the carrying out in the vicinity of the building of any part of~~

~~the authorised project; or~~

~~(b) after the completion of that part of the authorised project in the vicinity of the building at~~

~~any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first opened for use.~~

~~(3) For the purpose of determining how the functions under this article are to be exercised the~~

~~undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.~~

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

~~(a) enter the building and any land within its curtilage; and~~

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

~~(b) 1991 c.57. 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) of Part 1 of Schedule 21 to S.I. 2007/3538.~~

~~(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.~~

~~—†~~

~~(b) where the works cannot be carried out reasonably conveniently without entering land~~

~~which is adjacent to the building but outside its curtilage, enter the adjacent land (but not~~

~~any building erected on it).~~

~~(5) Before exercising —~~

~~(a) a right under paragraph (1) to carry out protective works to a building;~~

~~(b) a right under paragraph (3) to enter a building and land within its curtilage;~~

~~(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or~~

~~(d) a right under paragraph (4)(b) to enter land;~~

~~the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the~~

~~building or land not less than 14 days' notice of its intention to exercise that right and, in a case~~

~~falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.~~

~~(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the~~

~~building or land concerned may, by serving a counter-notice within the period of 10 days~~

~~beginning with the day on which the notice was served, require the question whether it is~~

~~necessary or expedient to carry out the protective works or to enter the building or land to be~~

~~referred to arbitration under article 42 (arbitration).~~

~~(7) The undertaker shall compensate the owners and occupiers of any building or land in relation~~

~~to which rights under this article have been exercised for any loss or damage arising to them by~~

~~reason of the exercise of those rights:~~

~~(8) Where—~~

~~(a) protective works are carried out under this article to a building; and~~

~~(b) within the period of 5 years beginning with the day on which the part of the authorised~~

~~project carried out in the vicinity of the building is first opened for use it appears that the~~

~~protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project;~~

~~the undertaker shall compensate the owners and occupiers of the building for any loss or damage~~

~~sustained by them.~~

~~(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation~~

~~under section 10(2) of the 1965 Act (compensation for injurious affection):~~

~~(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of~~

~~dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation):~~

~~(11) In this article “protective works” in relation to a building means—~~

~~(a) underpinning, strengthening and any other works the purpose of which is to prevent~~

~~damage which may be caused to the building by the carrying out, maintenance or use of~~

~~the authorised project; and~~

~~(b) any works the purpose of which is to remedy any damage which has been caused to the~~

~~building by the carrying out, maintenance or use of the authorised project.~~

~~Authority to survey and investigate the land~~

~~16.—(1) The undertaker may for the purposes of this Order enter on any land shown within the~~

~~Order limits or which may be affected by the authorised project and—~~

~~(a) survey or investigate the land;~~

~~(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions~~

~~on the land as the undertaker thinks fit to investigate the nature of the surface layer and~~

~~subsoil and remove soil samples;~~

~~(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and~~

~~(d) place on, leave on and remove from the land apparatus for use in connection with the~~

~~survey and investigation of land and making of trial holes.~~

~~—12~~

~~(2) No land may be entered or equipment placed or left on or removed from the land under~~

~~paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the~~

~~land.~~

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

~~(a) shall, if so required entering the land, produce written evidence of their authority to do so;~~
~~and~~
~~(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.~~
~~(4) No trial holes shall 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 shall not be unreasonably withheld.~~
~~(5) The undertaker shall 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, Part 1 (determination of questions of disputed compensation) of the 1961 Act.~~

~~Removal of human remains~~

~~17.—(1) In this article “the specified land” means [insert description of the land].~~
~~(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it shall remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.~~
~~(3) Before any such remains are removed from the specified land the undertaker shall give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—~~
~~(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and~~
~~(b) displaying a notice in a conspicuous place on or near to the specified land.~~
~~(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to [insert relevant local authority].~~
~~(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.~~
~~(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—~~
~~(a) removed and re-interred in any burial ground or cemetery in which burials may legally~~

take place; or

(b) removed to, and cremated in, any crematorium;

and that person shall, as soon as reasonably practicable after such re-interment or cremation;

provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the

personal representative or relative as that person claims to be, or that the remains in question can

be identified, the question shall be determined on the application of either party in a summary

manner by the county court, and the court may make an order specifying who shall remove the

remains and as to the payment of the costs of the application.

(8) The undertaker shall pay the reasonable expenses of removing and re-interring or cremating

the remains of any deceased person under this article.

-13

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph

has been given to the undertaker in respect of any remains in the specified land; or

(b) such notice is given and no application is made under paragraph (7) within 56 days after

the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains;

or

(d) it is determined that the remains to which any such notice relates cannot be identified;

subject to paragraph (10) the undertaker shall remove the remains and cause them to be re-interred

in such burial ground or cemetery in which burials may legally take place as the undertaker thinks

suitable for the purpose; and, so far as possible, remains from individual graves shall be re-interred

in individual containers which shall be identifiable by a record prepared with reference to the

original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the

personal representative or relative as that person claims to be and that the remains in question can

be identified, but that person does not remove the remains, the undertaker shall comply with any

reasonable request that person may make in relation to the removal and re-interment or cremation

of the remains.

~~(11) On the re-interment or cremation of any remains under this article—
(a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to [insert relevant local authority] mentioned in paragraph (4).~~

~~(12) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.~~

~~(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.~~

~~(14) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.~~

~~Compulsory acquisition of land~~

~~18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project [or to facilitate, or is incidental, to it][or is required as replacement land].~~

~~(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

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

~~(4) This article is subject to article 25 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and article 28 (temporary use of land for carrying out the authorised project).~~

~~(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.~~

~~Compulsory acquisition of land—incorporation of the mineral code~~

~~19. [Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(a)(minerals) [is/are]~~

~~incorporated in this Order subject to the modifications that—~~

~~(a) paragraph 8(3) is not incorporated;~~

~~(b) for “the acquiring authority” substitute “the undertaker”;~~

~~(c) [insert additional modifications].~~

~~Time limit for exercise of authority to acquire land compulsorily~~

~~20.— (1) After the end of the period of [5 years] beginning on the day on which this~~

~~Order is~~

~~made—~~

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

~~(b) no declaration shall be executed under section 4 of the Compulsory Purchase~~

~~(Vesting~~

~~Declarations) Act 1981 as applied by article 23 (application of the Compulsory~~

~~Purchase~~

~~(Vesting Declarations) Act 1981)(b).~~

~~(2) The authority conferred by article 28 (temporary use of land for carrying out the~~

~~authorised~~

~~project) shall cease at the end of the period referred to in paragraph (1), save that~~

~~nothing in this~~

~~paragraph shall prevent the undertaker remaining in possession of land after the end of~~

~~that period;~~

~~if the land was entered and possession was taken before the end of that period.~~

~~Compulsory acquisition of rights~~

~~21.— (1) The undertaker may acquire compulsorily the existing rights and create and~~

~~acquire~~

~~compulsorily the new rights described in the book of reference and shown on the~~

~~{insert name}~~

~~plan.~~

~~(2) As from the date on which a compulsory acquisition notice is served or the date on~~

~~which~~

~~any new right is vested in the undertaker, whichever is the later, the land over which~~

~~any new~~

~~rights is acquired shall be discharged from all rights, trusts and incidents to which it~~

~~was~~

~~previously subject so far as their continuance would be inconsistent with the exercise~~

~~of that new~~

~~right.~~

~~(3) Subject to section 8 of the 1965 Act, as substituted by article 26 (acquisition of~~

~~part of~~

~~certain properties), where the undertaker acquires an existing right over land under~~

~~paragraph (1),~~

~~the undertaker shall not be required to acquire a greater interest in that land.~~

~~(4) Any person who suffers loss as a result of the extinguishment or suspension of any~~

~~private~~

~~right of way under this article shall be entitled to compensation to be determined, in~~

~~ease of~~

~~dispute, under Part 1 of the 1961 Act.~~

~~Private rights of way~~

~~22.— (1) Subject to the provisions of this article, all private rights of way over land~~

~~subject to~~

~~compulsory acquisition under this Order shall be extinguished—~~

~~(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or~~

~~(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act~~

~~(power of entry);~~

~~whichever is the earlier.~~

~~(a) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~(b) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning~~

~~(Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this~~

~~Order.~~

~~15~~

~~(2) Subject to the provisions of this article, all private rights of way over land owned by the~~

~~undertaker which, being within the limits of land which may be acquired shown on the land plan,~~

~~is required for the purposes of this Order shall be extinguished on the appropriation of the land by~~

~~the undertaker for any of those purposes~~

~~(3) Subject to the provisions of this article, all private rights of way over land of which the~~

~~undertaker takes temporary possession under this Order shall be suspended and unenforceable for~~

~~as long as the undertaker remains in lawful possession of the land.~~

~~(4) Any person who suffers loss by the extinguishment or suspension of any private right of way~~

~~under this article shall be entitled to compensation to be determined, in case of dispute, under Part~~

~~1 of the 1961 Act.~~

~~(5) This article does not apply in relation to any right of way to which section 138 of the 2008~~

~~Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31~~

~~(statutory undertakers) applies.~~

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

~~(a) any notice given by the undertaker before—~~

~~(i) the completion of the acquisition of the land;~~

~~(ii) the undertaker's appropriation of it,~~

~~(iii) the undertaker's entry onto it, or~~

~~(iv) the undertaker's taking temporary possession of it,~~

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

~~(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.~~
~~(7) If any such agreement as is referred to in paragraph (6)(b)—~~
~~(a) is made with a person in or to whom the right of way is vested or belongs; and~~
~~(b) is expressed to have effect also for the benefit of those deriving title from or under that person;~~
~~it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.~~

~~Application of the Compulsory Purchase (Vesting Declarations) Act 1981~~

~~23.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply as if this~~

~~Order were a compulsory purchase order.~~

~~(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect~~

~~with the following modifications.~~

~~(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—~~
~~“(1) Before making a declaration under section 4 with respect to any land which is subject~~

~~to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—~~

~~(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and~~

~~(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~—16~~

~~(b) published in a local newspaper circulating in the area in which the land is situated.~~
~~”.~~

~~(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after~~

~~“given” there shall be inserted “and published”.~~

~~(5) In that section, for subsections (5) and (6) there shall be substituted—~~

~~“(5) For the purposes of this section, a person has a relevant interest in land if—
(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or~~

~~(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”~~

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

~~(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and~~

~~(b) subsection (2) shall be omitted.~~

~~(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by~~

~~section 4 of the Acquisition of Land Act 1981)” shall be omitted.~~

~~(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981~~

~~shall be construed as references to that Act as applied by section 125 of the 2008 Act to the~~

~~compulsory acquisition of land under this Order.~~

~~Acquisition of subsoil only~~

~~24.— (1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of~~

~~the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) as may be~~

~~required for any purpose for which that land may be acquired under that provision instead of~~

~~acquiring the whole of the land.~~

~~(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph~~

~~(1), the undertaker shall not be required to acquire an interest in any other part of the land.~~

~~(3) Paragraph (2) shall not prevent article 26 (acquisition of part of certain properties) from~~

~~applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a~~

~~house, building or manufactory.~~

~~Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~

~~25.— (1) This article applies to the land specified in Schedule F (land of which only subsoil~~

~~more than 9 metres beneath surface may be acquired).~~

~~(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 18 (compulsory acquisition of land) so much of, or such rights in, the~~

~~subsoil of the land as may be required for the purposes of the authorised project.~~

~~(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this~~

~~article applies, the undertaker shall not be required to acquire a greater interest in the land or an~~

~~interest in any other part of it.~~

~~(4) References in this article to the subsoil of land are references to the subsoil lying more than 9~~

~~metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—~~

~~(a) in the case of any land on which a building is erected, the level of the surface of the~~

~~ground adjoining the building;~~

~~(b) in the case of a watercourse or other water area, the level of the surface of the ground~~

~~nearest to it which is at all times above water level; or~~

~~(c) in any other case, ground surface level.~~

~~17~~

~~Acquisition of part of certain properties~~

~~26.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as~~

~~divided land) (as applied by section 125 of the 2008 Act) where—~~

~~(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in~~

~~respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”);~~

~~and~~

~~(b) a copy of this article is served on the owner with the notice to treat.~~

~~(2) In such a case, the owner may, within the period of 21 days beginning with the day on which~~

~~the notice was served, serve on the undertaker a counter notice objecting to the sale of the land~~

~~subject to the notice to treat which states that the owner is willing and able to sell the whole (“the~~

~~land subject to the counter notice”).~~

~~(3) If no such counter notice is served within that period, the owner shall be required to sell the~~

~~land subject to the notice to treat.~~

~~(4) If such a counter notice is served within that period, the question whether the owner shall be~~

~~required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to~~

~~take the land subject to the counter notice, be referred to the tribunal.~~

~~(5) If on such a reference the tribunal determines that the land subject to the notice to treat can~~

~~be taken—~~

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

~~(b) where the land subject to the notice to treat consists of a house with a park or garden,~~

~~without material detriment to the remainder of the land subject to the counter notice and~~

~~without seriously affecting the amenity and convenience of the house,~~

~~the owner shall be required to sell the land subject to the notice to treat.~~

~~(6) If on such a reference the tribunal determines that only part of the land subject to the notice~~

~~to treat can be taken—~~

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

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

~~without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.~~

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

~~(a) the land subject to the notice to treat cannot be taken without material detriment to the~~

~~remainder of the land subject to the counter-notice; but~~

~~(b) the material detriment is confined to a part of the land subject to the counter-notice;~~

~~the notice to treat shall be deemed to be a notice to treat for the land to which the material~~

~~detriment is confined in addition to the land already subject to the notice, whether or not the~~

~~additional land is land which the undertaker is authorised to acquire compulsorily under this~~

~~Order.~~

~~(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal~~

~~determines that—~~

~~(a) none of the land subject to the notice to treat can be taken without material detriment to~~

~~the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and~~

~~without~~

~~seriously affecting the amenity and convenience of the house; and~~

~~(b) the material detriment is not confined to a part of the land subject to the counter-notice;~~

~~the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice~~

~~whether or not the whole of that land is land which the undertaker is authorised to acquire~~

~~compulsorily under this Order.~~

~~18~~

~~(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is~~

~~deemed to be a notice to treat for less land or more land than that specified in the notice, the~~

~~undertaker may, within the period of 6 weeks beginning with the day on which the determination~~

~~is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any~~

~~loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be~~

~~determined in case of dispute by the tribunal.~~

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

~~Rights under or over streets~~

~~27.— (1) The undertaker may enter on and appropriate so much of the subsoil of, or air space over, any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air space for those purposes or any other purpose ancillary to the authorised project.~~

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

~~(3) Paragraph (2) shall not apply in relation to—~~

~~(a) any subway or underground building; or~~

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

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

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

~~Temporary use of land for carrying out the authorised project~~

~~28.— (1) The undertaker may, in connection with the carrying out of the authorised project—~~

~~(a) enter on and take temporary possession of the land specified in columns (1) and (2) of~~

~~Schedule G (land of which temporary possession may be taken) for the purpose specified~~

~~in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;~~

~~(b) remove any buildings and vegetation from that land; and~~

~~(c) construct temporary works (including the provision of means of access) and buildings on~~

that land:

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

~~(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column~~

~~(4) of Schedule G.~~

~~(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.~~

~~—19~~

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

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

~~(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project,~~

~~other than loss or damage for which compensation is payable under paragraph (5).~~

~~(8) The undertaker may not compulsorily acquire under this Order the land referred to in~~

~~paragraph (1) except that the undertaker shall not be precluded from—~~

~~(a) acquiring new rights over any part of that land under article 21 (compulsory acquisition of rights); or~~

~~(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 24~~

~~(acquisition of subsoil only) or in accordance with article 25 (acquisition of land limited~~

~~to subsoil lying more than 9 metres beneath surface).~~

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

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

~~Temporary use of land for maintaining authorised project~~

~~29.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—~~

~~(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project;~~

~~and~~

~~(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.~~

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

~~(a) any house or garden belonging to a house; or~~

~~(b) any building (other than a house) if it is for the time being occupied.~~

~~(3) Not less than 28 days before entering on and taking temporary possession of land under this~~

~~article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.~~

~~(4) The undertaker may only remain in possession of land under this article for so long as may~~

~~be reasonably necessary to carry out the maintenance of the part of the authorised project for~~

~~which possession of the land was taken.~~

~~(5) Before giving up possession of land of which temporary possession has been taken under~~

~~this article, the undertaker shall remove all temporary works and restore the land to the reasonable~~

~~satisfaction of the owners of the land.~~

~~(6) The undertaker shall pay compensation to the owners and occupiers of land of which~~

~~temporary possession is taken under this article for any loss or damage arising from the exercise in~~

~~relation to the land of the provisions of this article.~~

~~(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the~~

~~amount of the compensation, shall be determined under Part 1 of the 1961 Act.~~

~~(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of~~

~~the 1965 Act (further provisions as to compensation for injurious affection) or under any other~~

~~20~~

~~enactment in respect of loss or damage arising from the maintenance of the authorised project,~~

~~other than loss or damage for which compensation is payable under paragraph (6).
(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.
(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).~~

~~(11) In this article “the maintenance period”, in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project is first opened for use.~~

~~Special category land~~

~~30.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and [insert name of relevant body] has certified that a scheme for the provision of the replacement land as [common/open space/fuel or field garden allotment] has been implemented to its satisfaction.~~

~~(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in [insert name of relevant body] subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) In this article—
“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and
“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.~~

~~Statutory undertakers~~

~~31. The undertaker may—~~

- ~~(a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;~~
- ~~(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the [insert name] plan and described in the book of reference;~~
- ~~and~~

~~(c) acquire compulsorily the new rights over land belonging to statutory undertakers shown~~

~~on the [insert name] plan and described in the book of reference.~~

~~Apparatus and rights of statutory undertakers in stopped-up streets~~

~~32.—(1) Where a street is stopped up under article 9 (stopping up of streets), any statutory~~

~~utility whose apparatus is under, in, on, along or across the street shall have the same powers and~~

~~rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not~~

~~been made.~~

~~(2) Where a street is stopped up under article 9, any statutory utility whose apparatus is under,~~

~~in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker~~

~~shall—~~

~~(a) remove the apparatus and place it or other apparatus provided in substitution for it in~~

~~such other position as the utility may reasonably determine and have power to place it;~~

~~or~~

~~—21~~

~~(b) provide other apparatus in substitution for the existing apparatus and place it in such~~

~~position as described in sub-paragraph (a).~~

~~(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory~~

~~utility an amount equal to the cost reasonably incurred by the utility in or in connection with—~~

~~(a) the execution of the relocation works required in consequence of the stopping up of the~~

~~street; and~~

~~(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.~~

~~(4) If in the course of the execution of relocation works under paragraph (2)—~~

~~(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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 to be necessary, then, if it involves cost in the~~

~~execution of the relocation works 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.~~

~~(5) For the purposes of paragraph (4) —~~

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

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

~~(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.~~

~~(7) Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead —~~

~~(a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and~~

~~(b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.~~

~~(8) In this article —~~

~~“apparatus” has the same meaning as in Part 3 of the 1991 Act;~~

~~“relocation works” means work executed, or apparatus provided, under paragraph (2);~~

~~and~~

~~“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).~~

~~(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.~~
~~22~~

Recovery of costs of new connections

33.— (1) Where any apparatus of a public utility undertaker or of a public communications

~~provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.~~

~~(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a~~

~~sewer is removed under article 31, any person who is—~~

~~(a) the owner or occupier of premises the drains of which communicated with that sewer; or~~

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

~~(3) This article shall not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.~~

~~(4) In this paragraph—~~

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

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

~~Railway and navigation undertakings~~

~~34.— (1) Subject to the following provisions of this article, the undertaker may not under article~~

~~8 (street works) break up or open a street where the street, not being a highway maintainable at~~

~~public expense (within the meaning of the 1980 Act)—~~

~~(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or~~

~~(b) forms part of a level crossing belonging to any such undertakers or to such an authority or~~

~~to any other person;~~

~~except with the consent of the undertakers or authority or, as the case may be, of the person to~~

~~whom the level crossing belongs.~~

~~(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works,~~

~~within the meaning of Part 3 of the 1991 Act.~~

~~(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable~~

~~conditions as may be specified by the person giving it but shall not be unreasonably withheld.~~

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

~~Application of landlord and tenant law~~

~~35.—(1) This article applies to—~~

~~(a) any agreement for leasing to any person the whole or any part of the authorised project or~~

~~the right to operate the same; and~~

~~(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease~~

~~granted by or under that agreement is to be provided for that person’s use.~~

~~23~~

~~(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants~~

~~shall prejudice the operation of any agreement to which this article applies.~~

~~(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and~~

~~obligations of the parties to any lease granted by or under any such agreement so as to—~~

~~(a) exclude or in any respect modify any of the rights and obligations of those parties under~~

~~the terms of the lease, whether with respect to the termination of the tenancy or any other~~

~~matter;~~

~~(b) confer or impose on any such party any right or obligation arising out of or connected~~

~~with anything done or omitted on or in relation to land which is the subject of the lease, in~~

~~addition to any such right or obligation provided for by the terms of the lease; or~~

~~(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the~~

~~lease of any obligation of any other party under the lease.~~

~~Operational land for purposes of the 1990 Act~~

~~36. Development consent granted by this Order shall be treated as specific planning permission~~

~~for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as~~

~~operational land for the purposes of that Act).~~

~~Deemed consent under section 34 of the Coast Protection Act 1949~~

~~37. The undertaker is granted deemed consent under section 34 of the Coast Protection Act~~

~~1949(a) to carry out the works described in Schedule H, subject to the requirements set out in that~~

~~Schedule.~~

~~Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~

~~38. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(b) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.~~

~~Felling or lopping of trees~~

~~39.— (1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the~~

~~authorised project or any apparatus used in connection with the authorised project; or (b) from constituting a danger to passengers or other persons using the authorised project.~~

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

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

~~(a) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.~~

~~(b) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.~~

~~24~~

~~Trees subject to tree preservation orders~~

~~40.— (1) The undertaker may fell or lop any tree described in Schedule J [and identified on the [insert name] plan, or cut back its roots if it reasonably believes it to be necessary in order to do so~~

~~to prevent the tree or shrub— (a) from obstructing or interfering with the construction, maintenance or operation of the~~

~~authorised project or any apparatus used in connection with the authorised project; or (b) from constituting a danger to passengers or other persons using the authorised project.~~

~~(2) In carrying out any activity authorised by paragraph (1)—~~

~~(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~

~~(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.~~

~~(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.~~

~~(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

~~Certification of plans etc~~

~~41.— (1) The undertaker shall, as soon as practicable after the making of this Order, submit to~~

~~the decision maker copies of—~~

~~(a) the book of reference;~~

~~(b) the land plan;~~

~~(c) the rights plan;~~

~~(d) the works plan;~~

~~(e) the sections; and~~

~~(f) any other plans or documents referred to in this Order,~~

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

~~(2) A plan or document so certified shall be admissible in any proceedings as evidence of the~~

~~contents of the document of which it is a copy.~~

~~Arbitration~~

~~42. Any difference under any provision of this Order, unless otherwise provided for, shall 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~~

~~[insert appropriate body].~~

~~Schedule A~~

~~AUTHORISED PROJECT~~

~~Part 1~~

~~AUTHORISED DEVELOPMENT~~

~~[NOTE: This Part should describe as fully as possible the elements of the proposed project~~

~~(including any associated development), which are development for the purposes of section 32 of~~

~~the 2008 Act, for which development consent is sought. It should not include any elements of~~

~~development which would be authorised by specific provisions in the Order.]~~

~~-25~~

~~Part 2~~

~~ANCILLARY WORKS~~

~~[NOTE: This Part should describe as fully as possible the ancillary works for which consent is~~

~~sought and which are not development within the meaning of section 32 of the 2008 Act and which~~

~~would not be the subject of a separate provision [article] in this Order.]~~

~~Schedule B~~

~~STREETS SUBJECT TO STREET WORKS~~

~~(1)(2)~~

~~Area Street subject to street works~~

~~Schedule C~~

~~STREETS TO BE STOPPED UP~~

~~Part 1~~

~~STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED~~

~~(1)(2)(3)(4)~~

~~Area Street to be stopped~~

~~up~~

~~Extent of stopping up New street to be~~

~~substituted~~

~~Part 2~~

~~STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED~~

~~(1)(2)(3)~~

~~Area Street to be stopped up Extent of stopping up~~

~~Schedule D~~

~~STREETS TO BE TEMPORARILY STOPPED UP~~

~~(1)(2)(3)~~

~~Area Street to be temporarily~~

~~stopped up~~

~~Extent of temporary stopping~~

~~up~~

~~Schedule E~~

~~ACCESS TO WORKS~~

~~(1)(2)~~

~~Area Description of access~~

~~-26~~

~~Schedule F~~

~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH~~

~~SURFACE MAY BE ACQUIRED~~

~~(1)(2)~~

~~Area Number of land shown on land plan~~

~~Schedule G~~

~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~

~~(1)(2)(3)(4)~~

~~Area Number of land shown~~

~~on land plan~~

~~Purpose for which~~

~~temporary possession~~

~~may be taken~~

~~Relevant part of the~~

~~Authorised project~~

~~Schedule H~~

~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~

~~{Insert details of deemed consent}~~

~~Schedule I~~

~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION~~

~~ACT 1985~~

~~{Insert details of deemed licence}~~

~~Schedule J~~

~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~

~~(1)(2)(3)~~

~~Type of tree Number[reference] of tree
shown on land plan~~

~~Work to be carried out~~

~~SCHEDULE 2 Article 2~~

~~Model provisions for railways~~

~~CONTENTS~~

~~Preliminary~~

~~1. Interpretation~~

~~2. Incorporation of the Railway Clauses Acts~~

~~27~~

~~3. Application and modification of legislative provisions~~

~~Principal powers~~

~~4. Development consent etc. granted by the Order~~

~~5. Maintenance of authorised project~~

~~6. Limits of Deviation~~

~~7. Benefit of Order~~

~~8. Consent to transfer benefit of Order~~

~~Streets~~

~~9. Street works~~

~~10. Construction and maintenance of new or altered streets~~

~~11. Stopping up of streets~~

~~12. Application of the 1991 Act~~

~~13. Public rights of way~~

~~14. Temporary stopping up of streets~~

~~15. Access to works~~

~~16. Agreements with street authorities~~

~~17. Construction of bridges and tunnels~~

~~18. Level Crossings~~

~~19. Railway and navigation undertakings~~

~~Supplemental powers~~

~~20. Discharge of water~~

~~21. Protective work to buildings~~

~~22. Authority to survey and investigate the land~~

~~23. Removal of human remains~~

~~Powers of acquisition~~

~~24. Compulsory acquisition of land~~

~~25. Compulsory acquisition of land—incorporation of the mineral code~~

~~26. Time limit for exercise of authority to acquire land compulsorily~~

~~27. Compulsory acquisition of rights~~

~~28. Private rights of way~~

~~29. Application of the Compulsory Purchase (Vesting Declarations) Act 1981~~

~~30. Acquisition of subsoil only~~

~~31. Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~

~~32. Acquisition of part of certain properties~~

~~33. Application of the Land Compensation Act 1973~~

~~34. Rights under or over streets~~

~~35. Temporary use of land for carrying out the authorised project~~

~~36. Temporary use of land for maintaining authorised project~~

~~37. Special category land~~

~~38. Statutory undertakers~~
~~39. Apparatus and rights of statutory undertakers in stopped up streets~~
~~40. Recovery of costs of new connections~~
~~-28~~
~~Operations~~
~~41. Operation and use of railways~~
~~42. Fares~~
~~43. Deemed consent under section 34 of the Coast Protection Act 1949~~
~~44. Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~
~~45. Felling or lopping of trees~~
~~46. Trees subject to tree preservation orders~~
~~Miscellaneous and general~~
~~47. Application of landlord and tenant law~~
~~48. Operational land for purposes of the 1990 Act~~
~~49. Defence to proceedings in respect of statutory nuisance~~
~~50. Protections of Interests~~
~~51. Certification of plans etc~~
~~52. Arbitration~~
~~Schedule A~~
~~AUTHORISED PROJECT~~
~~Part 1~~
~~AUTHORISED DEVELOPMENT~~
~~Part 2~~
~~ANCILLARY WORKS~~
~~Schedule B~~
~~STREETS SUBJECT TO STREET WORKS~~
~~Schedule C~~
~~STREETS TO BE STOPPED UP~~
~~Part 1~~
~~STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED~~
~~Part 2~~
~~STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED~~
~~Schedule D~~
~~STREETS TO BE TEMPORARILY STOPPED UP~~
~~Schedule E~~
~~ACCESS TO WORKS~~
~~Schedule F~~
~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH~~
~~SURFACE~~
~~MAY BE ACQUIRED~~
~~-29~~
~~Schedule G~~
~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~
~~Schedule H~~
~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~
~~Schedule I~~
~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION~~
~~ACT~~
~~1985~~
~~Schedule J~~

~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~

~~Schedule K~~

~~LEVEL CROSSINGS~~

~~Schedule L~~

~~PROTECTIVE PROVISIONS~~

~~Preliminary~~

~~Interpretation~~

~~1.—(1) In this Order—~~

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

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

~~(a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of~~

~~Schedule 33 to, the Local Government,~~

~~Planning and Land Act 1980 (c.65). There are other amendments to the 1980 Act~~

~~which are not relevant to this Order.~~

~~(b) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule~~

~~15 to, the Planning and Compensation~~

~~Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to,~~

~~the Housing (Consequential~~

~~Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and~~

~~Part 2 of Schedule 18 to, the Planning~~

~~and Compensation Act 1991 (c.34). Section 11(1) and sections 3, 31 and 32 were~~

~~amended by section 34(1) of, and~~

~~Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and~~

~~paragraph 12(1) of Schedule 5 to, the~~

~~Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12~~

~~was amended by section 56(2) of,~~

~~and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by~~

~~section 139 of the Tribunals, Courts~~

~~and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and~~

~~paragraph 14 of Schedule 15 to, the~~

~~Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by~~

~~the Statute Law (Repeals) Act 1973~~

~~(c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule~~

~~15 to, the Planning and Compensation~~

~~Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the~~

~~Church of England (Miscellaneous~~

~~Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act~~

~~which are not relevant to this Order.~~

~~—30~~

~~“the 1980 Act” means the Highways Act 1980(a);~~

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

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

~~“the 2008 Act” means the Planning Act 2008(d);~~

~~“ancillary works” means the ancillary works described in Part 2 of Schedule A~~

~~(authorised~~

~~project) [and any other works authorised by the Order] and which are not~~

~~development within~~

~~the meaning of section 32 of the 2008 Act;~~

~~“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~
~~“the authorised project” means the authorised development and the ancillary works authorised by this Order;~~
~~“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;~~
~~“building” includes any structure or erection or any part of a building, structure or erection;~~
~~“carriageway” has the same meaning as in the 1980 Act;~~
~~“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;~~
~~“the decision-maker” has the same meaning as in section 103 of the 2008 Act;~~
~~“highway” and “highway authority” have the same meaning as in the 1980 Act;~~
~~“the land plan” means the plan certified as the land plan by the decision-maker for the Principal powers~~
4. Development consent etc. granted by the Order
5. Maintenance of authorised project
6. Limits of Deviation
7. Benefit of Order
8. Consent to transfer benefit of Order
Streets
9. Street works
10. Construction and maintenance of new or altered streets
11. Stopping up of streets
12. Application of the 1991 Act
13. Public rights of way
14. Temporary stopping up of streets
15. Access to works
16. Agreements with street authorities
17. Construction of bridges and tunnels
18. Level Crossings
19. Railway and navigation undertakings
Supplemental powers
20. Discharge of water
21. Protective work to buildings
22. Authority to survey and investigate the land
23. Removal of human remains
Powers of acquisition
24. Compulsory acquisition of land
25. Compulsory acquisition of land—incorporation of the mineral code
26. Time limit for exercise of authority to acquire land compulsorily
27. Compulsory acquisition of rights
28. Private rights of way
29. Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- ~~30. Acquisition of subsoil only~~
- ~~31. Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~
- ~~32. Acquisition of part of certain properties~~
- ~~33. Application of the Land Compensation Act 1973~~
- ~~34. Rights under or over streets~~
- ~~35. Temporary use of land for carrying out the authorised project~~
- ~~36. Temporary use of land for maintaining authorised project~~
- ~~37. Special category land~~
- ~~38. Statutory undertakers~~
- ~~39. Apparatus and rights of statutory undertakers in stopped-up streets~~
- ~~40. Recovery of costs of new connections~~

~~-28~~

~~Operations~~

- ~~41. Operation and use of railways~~
 - ~~42. Fares~~
 - ~~43. Deemed consent under section 34 of the Coast Protection Act 1949~~
 - ~~44. Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~
 - ~~45. Felling or lopping of trees~~
 - ~~46. Trees subject to tree preservation orders~~
- ~~Miscellaneous and general~~
- ~~47. Application of landlord and tenant law~~
 - ~~48. Operational land for purposes of the 1990 Act~~
 - ~~49. Defence to proceedings in respect of statutory nuisance~~
 - ~~50. Protections of Interests~~
 - ~~51. Certification of plans etc~~

~~52. Arbitration~~

~~Schedule A~~

~~AUTHORISED PROJECT~~

~~Part 1~~

~~AUTHORISED DEVELOPMENT~~

~~Part 2~~

~~ANCILLARY WORKS~~

~~Schedule B~~

~~STREETS SUBJECT TO STREET WORKS~~

~~Schedule C~~

~~STREETS TO BE STOPPED UP~~

~~Part 1~~

~~STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED~~

~~Part 2~~

~~STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED~~

~~Schedule D~~

~~STREETS TO BE TEMPORARILY STOPPED UP~~

~~Schedule E~~

~~ACCESS TO WORKS~~

~~Schedule F~~

~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE~~

~~MAY BE ACQUIRED~~

~~-29~~

~~Schedule G~~

~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~

~~Schedule H~~

~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~

~~Schedule I~~

~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT~~

~~1985~~

~~Schedule J~~

~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~

~~Schedule K~~

~~LEVEL CROSSINGS~~

~~Schedule L~~

~~PROTECTIVE PROVISIONS~~

~~Preliminary~~

~~Interpretation~~

~~1.—(1) In this Order—~~

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

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

~~(a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government,~~

~~Planning and Land Act 1980 (c.65). There are other amendments to the 1980 Act which are not relevant to this Order.~~

~~(b) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation~~

~~Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential~~

~~Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning~~

~~and Compensation Act 1991 (c.34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and~~

~~Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the~~

~~Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of,~~

~~and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts~~

~~and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the~~

~~Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973~~

~~(c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation~~

~~Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous~~

~~Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.~~

~~30~~

~~“the 1980 Act” means the Highways Act 1980(a);~~

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

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

~~“the 2008 Act” means the Planning Act 2008(d);~~
~~“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not development within the meaning of section 32 of the 2008 Act;~~
~~“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~
~~“the authorised project” means the authorised development and the ancillary works authorised by this Order;~~
~~“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;~~
~~“building” includes any structure or erection or any part of a building, structure or erection;~~
~~“carriageway” has the same meaning as in the 1980 Act;~~
~~“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;~~
~~“the decision-maker” has the same meaning as in section 103 of the 2008 Act;~~
~~“highway” and “highway authority” have the same meaning as in the 1980 Act;~~
~~“the land plan” means the plan certified as the land plan by the purposes of this Order;~~
~~“limits of deviation” means the limits of deviation referred to in article 6;~~
~~“maintain” and any of its derivatives include to inspect repair, adjust, alter, remove, reconstruct or replace the authorised project and any derivative of “maintain” shall be construed accordingly;~~
~~“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;~~
~~“the Order limits” means the limits shown on the works plan within which the authorised project may be carried out;~~
~~“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(e);~~
~~(a) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b)~~

of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1)(2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(b) 1990 c.8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a),(c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(c) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(d) 2008 c.29.

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

-31

“relevant planning authority” means—

(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;

(ii) a National Park Authority;

(iii) the Broads Authority; and

(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;

“rights plan” means the plan certified as the rights plan by the decision-maker for the purposes of this Order;

“the sections” means the sections shown on the plan certified as the section drawings plan by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

~~“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street; “street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act; “tree preservation order” has the meaning given in section 198 of the 1990 Act; “the tribunal” means the Lands Chamber of the Upper Tribunal; “undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act; “watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and “the works plan” means the plan certified as the works plan by the decision-maker for the purposes of this Order.~~

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

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

~~Incorporation of the Railway Clauses Acts~~

~~2.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(a) shall be incorporated in this Order—~~
~~section 46 (crossing of roads—level crossings), subject to paragraph (4) and article 18 (level crossings);~~
~~section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;~~
~~section 61 (company to make sufficient approaches and fences to highways crossing on the level);~~
~~section 68 (accommodation works by company);~~
~~(a) 1845 c. 20. Section 46 was amended by sections 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c.39). Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c.101). Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1968 (c.56) and articles 5(1) and (2) of, and paras 1 and 3 of Schedule 7 to, S.I. 2009/1307. Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c.101), and section 31(6) of the Criminal Law Act 1977 (c.45), and sections 37 and 49 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1845 Act not~~

relevant to this Order.

~~32~~

~~section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as~~

~~shall be authorised by two justices”;~~

~~sections 72 and 73 (supplementary provisions relating to accommodation works);~~

~~section 77 (presumption that minerals excepted from acquisition of land);~~

~~sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and~~

~~Support) Act 1923(a); and~~

~~section 105 (carriage of dangerous goods on railway), except for the words from “and if~~

~~any person” to “for every such offence”.~~

~~(2) The following provisions of the Railways Clauses Act 1863(b) shall be incorporated in this~~

~~Order—~~

~~sections 5 and 7 (level crossings); and~~

~~section 12 (signals, watchmen etc.);~~

~~(3) In those provisions, as incorporated in this Order—~~

~~“the company” means the undertaker;~~

~~“goods” includes any thing conveyed on the railway authorised to be constructed by this~~

~~Order;~~

~~“lease” includes an agreement for a lease;~~

~~“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;~~

~~“the railway” means any railway authorised to be constructed by this Order and any other~~

~~authorised development; and~~

~~“the special Act” means this Order.~~

~~(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order,~~

~~for the proviso there shall be substituted “Provided always that, with the consent of the highway~~

~~authority and subject to such conditions as the authority may reasonably impose, the railway may~~

~~be carried across a highway on the level.”.~~

~~Application and modification of legislative provisions~~

~~3.—(1) Subject to the modifications set out in paragraph (2) [the following provisions of] the~~

~~[insert short title of the relevant Act] shall be incorporated in this Order—~~

~~(a) section X [specify relevant section(s)]; and~~

~~(b) section X [specify relevant section(s)].~~

~~(4) The provisions of the [insert relevant Act] Act [date] as incorporated in this Order shall be~~

~~modified as follows [insert relevant modifications].~~

~~(5) In construing the [insert relevant Act] Act [date] as incorporated the following expressions~~

shall have the following meanings [insert relevant expressions and definitions:

Principal powers

Development consent etc. granted by the Order

4. Subject to the provisions of this Order and to the requirements in the Schedule (requirements)

attached to this Order the undertaker is granted—

(a) 1923 c. 20. Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c.19);

(b) 1863 c. 92;

—33

(a) development consent for the authorised development; and

(b) consent for the ancillary works;

to be carried out within the Order limits.

Maintenance of authorised project

5. The undertaker may at any time maintain the authorised project, except to the extent that this

Order or an agreement made under this Order, provides otherwise.

Limits of Deviation

6. In carrying out linear works the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the

works plan to the extent of the limits of deviation shown on that plan; and

(b) deviate vertically from the levels of the authorised development shown on the sections—

(i) to any extent not exceeding [insert number] metres upwards; or

(ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of articles [] and []

[specify relevant articles] shall have effect solely for the benefit of [specify person, body or class

of person];

[NOTE: This article is required where provisions of the Order are specific to a named undertaker

or class of undertaker (see section 156(2) of the 2008 Act).]

Consent to transfer benefit of Order

8.—(1) The undertaker may, with the consent of the [specify person or body]—

(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 so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this

~~Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.~~

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

~~Streets~~

~~Street works~~

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

~~(a) break up or open the street, or any sewer, drain or tunnel under it;~~

~~(b) tunnel or bore under the street;~~

~~—34~~

~~(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), (b), (c) and (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) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).~~

~~(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.~~

~~[NOTE: This article should not be used for the purposes of authorising street works that affect a~~

~~trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets~~

~~subject to street works). For any street works affecting a trunk road the undertaker should make~~

~~an application for a licence under section 50 of the 1991 Act.]~~

~~Construction and maintenance of new or altered streets~~

~~10.—(1) Any street (other than [insert relevant private streets]) to be constructed under this~~

~~Order shall be completed to the reasonable satisfaction of the highway authority and, unless~~

~~otherwise agreed with the highway authority, shall be maintained by and at the expense of the~~

~~undertaker for a period of [12 months] from its completion and at the expiry of that period by and~~

~~at the expense of the highway authority.~~

~~(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of [12 months] from its completion and at the expiry of that period by and at the expense of the street authority.~~

~~(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of the undertaker.~~

~~(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.~~

~~(5) For the purposes of a defence under paragraph (4), the court shall in particular have regard to the following matters—~~

~~(a) the character of the street and the traffic which was reasonably to be expected to use it;~~

~~(b) the standard of maintenance appropriate for a street of that character and used by such traffic;~~

~~(c) the state of repair in which a reasonable person would have expected to find the street;~~

~~(d) whether the undertaker knew, or could reasonably have been expected to know, that the~~

~~condition of the part of the street to which the action relates was likely to cause danger to users of the street;~~

~~(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed;~~

~~but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged~~

~~for a competent person to carry out or supervise the maintenance of the part of the street to which~~

~~the action relates unless it is also proved that the undertaker had given the competent person~~

~~proper instructions with regard to the maintenance of the street and that the competent person had~~

~~carried out those instructions.~~

~~(6) Nothing in this article shall—~~

~~35~~

~~(a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker shall not by reason of any duty under that article to maintain a street be taken to be a street authority in relating to that street for the purposes~~

~~of Part 3 of that Act; or~~

~~(b) have effect in relation to the street works with regard to which the provisions of Part 3 of~~

~~the 1991 Act apply.~~

~~Stopping up of streets~~

~~11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the~~

~~carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2)~~

~~of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the~~

~~letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.~~

~~(2) No street specified in columns (1) and (2) of Part 1 of Schedule C (being a street to be~~

~~stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this~~

~~article unless—~~

~~(a) the new street to be substituted for it, which is specified in column (4) of that Part of that~~

~~Schedule, has been completed to the reasonable satisfaction of the street authority and is~~

~~open for use; or~~

~~(b) a temporary alternative route for the passage of such traffic as could have used the street~~

~~to be stopped up is first provided and subsequently maintained by the undertaker, to the~~

~~reasonable satisfaction of the street authority, between the commencement and~~

~~termination points for the stopping up of the street until the completion and opening of~~

~~the new street in accordance with sub-paragraph (a).~~

~~(3) No street specified in columns (1) and (2) of Part 2 of Schedule C (being a street to be~~

~~stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under~~

~~this article unless the condition specified in paragraph (4) is satisfied in relation to all the land~~

~~which abuts on either side of the street to be stopped up.~~

~~(4) The condition referred to in paragraph (3) is that—~~

~~(a) the undertaker is in possession of the land; or~~

~~(b) there is no right of access to the land from the street concerned; or~~

~~(c) there is reasonably convenient access to the land otherwise than from the street concerned; or~~

~~(d) the owners and occupiers of the land have agreed to the stopping up.~~

~~(5) Where a street has been stopped up under this article—~~

~~(a) all rights of way over or along the street so stopped up shall be extinguished; and
(b) the undertaker may appropriate and use for the purposes of the authorised project so~~

~~much of the site of the street as is bounded on both sides by land owned by the undertaker.~~

~~(6) Any person who suffers loss by the suspension or extinguishment of any private right of way~~

~~under this article shall be entitled to compensation to be determined, in case of dispute, under Part~~

~~1 of the 1961 Act.~~

~~(7) This article is subject to article 39 (apparatus etc. of statutory undertakers).~~

~~Application of the 1991 Act~~

~~12. Works carried out under this Order in relation to a highway which consists of or includes a~~

~~carriageway shall be treated for the purposes of Part 3 of the 1991 Act (street works) as major~~

~~transport works if—~~

~~(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of~~

~~section 86(3) of that Act (which defines what highway authority works are major highway works); or~~

~~—36~~

~~(b) they are works which, had they been carried out by the highway authority, might have~~

~~been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual~~

~~carriageways and roundabouts).~~

~~Public rights of way~~

~~13.—(1) With effect from the [date of publication of this Order] [the date of certification by the~~

~~local highway authority that the agreed alternative right of way has been created to the standard~~

~~defined in the implementation plan], [the section of] the public right of way (being a [insert one~~

~~of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between~~

~~the points [A] and [B] on the rights plan is extinguished.~~

~~(2) With effect from [that same date] [insert later date] an alternative section of [insert description of right of way of that same type] as marked in [green] between the points [C] and [D]~~

~~on the rights plan is created.~~

~~(3) In this article—~~

~~“implementation plan” means the written plan agreed between the undertaker and the local~~

~~highway authority for creation of the agreed alternative right of way to the defined standard;~~

~~and~~

~~“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.~~

~~Temporary stopping up of streets~~

~~14.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—~~
~~(a) divert the traffic from the street; and~~
~~(b) subject to paragraph (2), prevent all persons from passing along the street.~~
~~(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.~~
~~(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.~~
~~(4) The undertaker shall not temporarily stop up, alter or divert—~~
~~(a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and~~
~~(b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.~~
~~(5) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~Access to works~~

~~15. The undertaker may, for the purposes of the authorised project—~~
~~(a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule E (access to works); and~~
~~(b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.~~

~~37~~

~~Agreements with street authorities~~

~~16.—(1) A street authority and the undertaker may enter into agreements with respect to—~~
~~(a) the construction of any new street, including any structure carrying the street over or under a railway authorised by this Order;~~
~~(b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;~~

~~(c) any stopping up, alteration or diversion of a street authorised by this Order; or
(d) the carrying out in the street of any of the works referred to in article 9(1) (street works).~~

~~(2) Such an agreement may, without prejudice to the generality of paragraph (1)—
(a) make provision for the street authority to carry out any function under this Order which~~

~~relates to the street in question;~~

~~(b) include an agreement between the undertaker and street authority specifying a reasonable~~

~~time for the completion of the works; and~~

~~(c) contain such terms as to payment and otherwise as the parties consider appropriate.~~

~~Construction of bridges and tunnels~~

~~17. Any bridge or tunnel to be constructed under this Order for carrying a highway over or under~~

~~a railway shall be constructed in accordance with the plans and specifications approved by the~~

~~relevant planning authority after consultation with the highway authority.~~

~~Level Crossings~~

~~18.—(1) The undertaker may construct the railway so as to carry it on the level across the~~

~~highways specified in Schedule K.~~

~~(2) The undertaker may in constructing any new level crossing alter the level of any highway~~

~~specified in Schedule K.~~

~~(3) The highway authority and the undertaker may enter into agreements with respect to the~~

~~construction and maintenance of any new level crossing; and such an agreement may contain such~~

~~terms as to payment or otherwise as the parties consider appropriate.~~

~~(4) In this article—~~

~~“new level crossing” means the place at which the railway is authorised by this article to cross~~

~~a highway on the level; and~~

~~“the railway” means the railway authorised to be constructed by this Order.~~

~~Railway and navigation undertakings~~

~~19.—(1) Subject to the following provisions of this article, the undertaker may not under article~~

~~9 (street works) break up or open a street where the street, not being a highway maintainable at~~

~~public expense (within the meaning of the 1980 Act)—~~

~~(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or~~

~~(b) forms part of a level crossing belonging to any such undertakers or to such an authority or~~

~~to any other person;~~

~~except with the consent of the undertakers or authority or, as the case may be, of the person to~~

~~whom the level crossing belongs.~~

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

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

~~-38~~

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

~~Supplemental powers~~

~~Discharge of water~~

~~20.—(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 project and for that~~

~~purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make~~

~~openings into, and connections with, the watercourse, public sewer or drain.~~

~~(2) Any dispute arising from the making of connections to or the use of a public sewer or drain~~

~~by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under~~

~~section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).~~

~~(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain~~

~~except with the consent of the person to whom it belongs; and such consent may be given subject~~

~~to such terms and conditions as that person may reasonably impose, but shall not be unreasonably~~

~~withheld.~~

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

~~(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but~~

~~such approval shall not be unreasonably withheld; and~~

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

~~(5) The undertaker shall 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.~~

~~(6) The undertaker shall take such steps as are reasonably practicable to secure that any water~~

~~discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be~~

practicable from gravel, soil or other solid substance, oil or matter in suspension.
(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(b) (offences of polluting water).

(8) In this article—
(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective work to buildings

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

(2) Protective works may be carried out—
(a) 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99 subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641. There are other amendments to section 106 which are not relevant to this Order.

(b) 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) in Part 1 of Schedule 21 to S.I. 2007/3538.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5).

—39

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or

(b) after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first opened for use.

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

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

(a) enter the building and any land within its curtilage; and

~~(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).~~

~~(5) Before exercising—~~

~~(a) a right under paragraph (1) to carry out protective works to a building;~~

~~(b) a right under paragraph (3) to enter a building and land within its curtilage;~~

~~(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or~~

~~(d) a right under paragraph (4)(b) to enter land;~~

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

~~(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 52 (arbitration).~~

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

~~(8) Where—~~

~~(a) protective works are carried out under this article to a building; and~~

~~(b) within the period of 5 years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project,~~

~~the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.~~

~~(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).~~

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

~~(11) In this article “protective works” in relation to a building means—~~

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

~~40~~

~~Authority to survey and investigate the land~~

~~22.—(1) The undertaker may for the purposes of this Order enter on any land shown within the~~

~~Order limits or which may be affected by the authorised project and—~~

~~(a) survey or investigate the land;~~

~~(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions~~

~~on the land as the undertaker thinks fit to investigate the nature of the surface layer and~~

~~subsoil and remove soil samples;~~

~~(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and~~

~~(d) place on, leave on and remove from the land apparatus for use in connection with the~~

~~survey and investigation of land and making of trial holes.~~

~~(2) No land may be entered or equipment placed or left on or removed from the land under~~

~~paragraph (1) unless at least 14 days notice has been served on every owner and occupier of the~~

~~land.~~

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

~~(a) shall, if so required, produce written evidence of their authority to do so; and~~

~~(b) may take with them such vehicles and equipment as are necessary to carry out the survey~~

~~or investigation or to make the trial holes.~~

~~(4) No trial holes shall 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 shall not be unreasonably withheld.~~

~~(5) The undertaker shall 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).~~

~~Removal of human remains~~

~~23.—(1) In this article “the specified land” means [insert description of the land].~~

~~(2) Before the undertaker carries out any development or works which will or may disturb any~~

human remains in the specified land it shall remove those human remains from the specified land;
or cause them to be removed, in accordance with the following provisions of this article.

~~(3) Before any such remains are removed from the specified land the undertaker shall give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—~~

~~(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and~~

~~(b) displaying a notice in a conspicuous place on or near to the specified land.~~

~~(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to [insert relevant local authority].~~

~~(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.~~

~~(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—~~

~~(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or~~

~~41~~

~~(b) removed to, and cremated in, any crematorium;~~

~~and that person shall, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).~~

~~(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who shall remove the remains and as to the payment of the costs of the application.~~

~~(8) The undertaker shall pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.~~

~~(9) If—~~

~~(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph~~

has been given to the undertaker in respect of any remains in the specified land; or
(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
(d) it is determined that the remains to which any such notice relates cannot be identified;
subject to paragraph (10) the undertaker shall remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and so far as possible remains from individual graves shall be reinterred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.
(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker shall comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.
(11) On the re-interment or cremation of any remains under this article—
(a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to [insert relevant local authority] mentioned in paragraph (4).
(12) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.
(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.
(14) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

~~(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.
-42~~

~~Powers of acquisition~~

~~Compulsory acquisition of land~~

~~24.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project [or to facilitate, or is incidental, to it][or is required as replacement land].~~

~~(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008~~

~~Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be~~

~~discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) Any person who suffers loss by the extinguishment or suspension of any private right of way~~

~~under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~(4) This article is subject to article 31 (acquisition of land limited to subsoil lying more than 9~~

~~metres beneath surface) and article 35 (temporary use of land for carrying out the authorised project).~~

~~Compulsory acquisition of land—incorporation of the mineral code~~

~~25. [Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(a)(minerals) [is/are]~~

~~incorporated in this Order subject to the modifications that—~~

~~(a) paragraph 8(3) is not incorporated;~~

~~(b) for “the acquiring authority” substitute “the undertaker”;~~

~~(c) [insert additional modifications].~~

~~Time limit for exercise of authority to acquire land compulsorily~~

~~26.—(1) After the end of the period of [5 years] beginning on the day on which the Order is made—~~

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

~~(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting~~

~~Declarations) Act 1981 as applied by article 29 (application of the Compulsory Purchase~~

~~(Vesting Declarations) Act 1981)(b).~~

~~(2) The authority conferred by article 35 (temporary use of land for carrying out the authorised~~

~~project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this~~

~~paragraph shall prevent the undertaker remaining in possession of land after the end of that period,~~

~~if the land was entered and possession was taken before the end of that period.~~

~~Compulsory acquisition of rights~~

~~27.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plan [rights plan].~~

~~(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was~~

~~(a) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.~~

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

~~43~~

~~previously subject so far as their continuance would be inconsistent with the exercise of that new right.~~

~~(3) Subject to section 8 of the 1965 Act as substituted by article 32 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.~~

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

~~Private rights of way~~

~~28.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—~~

~~(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or~~

~~(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act~~

~~(power of entry),
whichever is the earliest.~~

~~(2) Subject to the provisions of this article, all private rights of way over land owned by the~~

~~undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.~~

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

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

~~(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 38 (statutory undertakers) applies.~~

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

~~(a) any notice given by the undertaker before—~~

~~(i) the completion of the acquisition of the land;~~

~~(ii) the undertaker's appropriation of it;~~

~~(iii) the undertaker's entry onto it; or~~

~~(iv) the undertaker's taking temporary possession of it;~~

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

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

~~(7) If any such agreement as is referred to in paragraph (6)(b)—~~

~~(a) is made with a person in or to whom the right of way is vested or belongs; and~~

~~(b) is expressed to have effect also for the benefit of those deriving title from or under that~~

~~person;~~

~~it shall be effective in respect of the persons so deriving title, whether the title was derived before~~

~~or after the making of the agreement.~~

~~44~~

~~Application of the Compulsory Purchase (Vesting Declarations) Act 1981~~

~~29.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply as if this~~

~~Order were a compulsory purchase order.~~

~~(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect~~

~~with the following modifications.~~

~~(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—~~

~~“(1) Before making a declaration under section 4 with respect to any land which is subject~~

to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is —

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

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after

“given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted —

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

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

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

(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by

section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act

1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the

compulsory acquisition of land under this Order.

Acquisition of subsoil only

30.— (1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of

the land referred to in article 24(1) (compulsory acquisition of land) as may be required for any

purpose for which that land may be acquired under that provision instead of acquiring the whole
of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph

(1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 32 (acquisition of part of certain properties) from

applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a

house, building or manufactory.

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning

(Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and

16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2

~~of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.~~

~~45~~

~~Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~

~~31.— (1) This article applies to the land specified in Schedule F (land of which only subsoil~~

~~more than 9 metres beneath surface may be acquired).~~

~~(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 24 (compulsory acquisition of land) so much of, or such rights in, the~~

~~subsoil of the land as may be required for the purposes of the authorised project.~~

~~(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this~~

~~article applies, the undertaker shall not be required to acquire a greater interest in the land or an~~

~~interest in any other part of it.~~

~~(4) References in this article to the subsoil of land are references to the subsoil lying more than 9~~

~~metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—~~

~~(a) in the case of any land on which a building is erected, the level of the surface of the~~

~~ground adjoining the building;~~

~~(b) in the case of a watercourse or other water area, the level of the surface of the ground~~

~~nearest to it which is at all times above water level; or~~

~~(c) in any other case, ground surface level.~~

~~Acquisition of part of certain properties~~

~~32.— (1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as~~

~~divided land) (as applied by section 125 of the 2008 Act) where—~~

~~(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in~~

~~respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and~~

~~(b) a copy of this article is served on the owner with the notice to treat.~~

~~(2) In such a case, the owner may, within the period of 21 days beginning with the day on which~~

~~the notice was served, serve on the undertaker a counter notice objecting to the sale of the land~~

~~subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter notice”).~~

~~(3) If no such counter notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.~~

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

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

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

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

~~without seriously affecting the amenity and convenience of the house, the owner shall be required to sell the land subject to the notice to treat.~~

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

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

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

~~without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.~~

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

~~(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter notice; but~~

~~(b) the material detriment is confined to a part of the land subject to the counter notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material~~

~~detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this~~

~~Order.~~

~~(8) If the undertaker agrees to take the land subject to the counter notice, or if the tribunal determines that—~~
~~(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter notice or, as the case may be, without material detriment to the remainder of the land subject to the counter notice and without seriously affecting the amenity and convenience of the house; and~~
~~(b) the material detriment is not confined to a part of the land subject to the counter notice,~~
~~the notice to treat shall be deemed to be a notice to treat for the land subject to the counter notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

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

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

~~Application of the Land Compensation Act 1973~~

~~33.—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of earavans and other structures affected by noise of public works) of the Land Compensation Act 1973(a) which apply to a railway provided or used in the exercise of statutory powers shall apply to the railway comprised in the authorised project as if that railway was provided or used in the exercise of statutory powers:~~

~~(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 shall have effect as if any works comprised in the authorised project were public works for the purposes of that~~

section:

Rights under or over streets

~~34.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air space~~

~~over, any street within the Order limits as may be required for the purposes of the authorised~~

~~project and may use the subsoil or air space for those purposes or any other purpose ancillary to~~

~~the authorised project.~~

~~(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1)~~

~~in relation to a street without being required to acquire any part of the street or any easement or~~

~~right in the street.~~

~~(a) 1973 c.26. Section 20 was amended by subsections (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic~~

~~Regulation Act 1984 (c.27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the~~

~~Highway Act 1980 (c.66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c.42).~~

~~There are other amendments to the 1973 Act which are not relevant to this Order.~~

~~47~~

~~(3) Paragraph (2) shall not apply in relation to—~~

~~(a) any subway or underground building; or~~

~~(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a~~

~~building fronting onto the street.~~

~~(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under~~

~~paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and~~

~~who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute;~~

~~under Part 1 of the 1961 Act.~~

~~(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker~~

~~to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of~~

~~measures of which the allowable costs are to be borne in accordance with that section.~~

~~Temporary use of land for carrying out the authorised project~~

~~35.—(1) The undertaker may, in connection with the carrying out of the authorised project—~~

~~(a) enter on and take temporary possession of the land specified in columns (1) and (2) of~~

~~Schedule G (land of which temporary possession may be taken) for the purpose specified~~

~~in relation to that land in column (3) of that Schedule relating to the part of the authorised~~

~~project specified in column (4) of that Schedule;~~

~~(b) remove any buildings and vegetation from that land; and~~

~~(c) construct temporary works (including the provision of means of access) and buildings on that land.~~

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

~~(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule G.~~

~~(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.~~

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

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

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

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

~~(a) acquiring new rights over any part of that land under article 27 (compulsory acquisition of rights); or~~

~~(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 30 (acquisition of subsoil only) or in accordance with article 31 (acquisition of land limited to subsoil lying more than 9 metres beneath surface).~~

~~(9) Where the undertaker takes possession of land under this article, the undertaker shall not be~~

~~required to acquire the land or any interest in it.~~

~~48~~

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

~~Temporary use of land for maintaining authorised project~~

~~36.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part~~

~~of the authorised project, the undertaker may—~~

~~(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project;~~

~~and~~

~~(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.~~

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

~~(a) any house or garden belonging to a house; or~~

~~(b) any building (other than a house) if it is for the time being occupied.~~

~~(3) Not less than 28 days before entering on and taking temporary possession of land under this~~

~~article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.~~

~~(4) The undertaker may only remain in possession of land under this article for so long as may~~

~~be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.~~

~~(5) Before giving up possession of land of which temporary possession has been taken under~~

~~this article, the undertaker shall remove all temporary works and restore the land to the reasonable~~

~~satisfaction of the owners of the land.~~

~~(6) The undertaker shall pay compensation to the owners and occupiers of land of which~~

~~temporary possession is taken under this article for any loss or damage arising from the exercise in~~

~~relation to the land of the provisions of this article.~~

~~(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the~~

~~amount of the compensation, shall be determined under Part 1 of the 1961 Act.~~

~~(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of~~

~~the 1965 Act (further provisions as to compensation for injurious affection) or under any other~~

~~enactment in respect of loss or damage arising from the maintenance of the authorised project,~~

~~other than loss or damage for which compensation is payable under paragraph (6).~~

~~(9) Where the undertaker takes possession of land under this article, the undertaker shall not be~~

~~required to acquire the land or any interest in it.~~

~~(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority)~~

~~shall apply to~~

~~the temporary use of land pursuant to this article to the same extent as it applies to the compulsory~~

~~acquisition of land under this Order by virtue of section 125 of the 2008 Act~~

~~(application of~~

~~compulsory acquisition provisions).~~

~~(11) In this article “the maintenance period”, in relation to any part of the authorised project,~~

~~means the period of 5 years beginning with the date on which that part of the authorised project is~~

~~first opened for use.~~

~~Special category land~~

~~37.—(1) The special category land shall not vest in the undertaker until the undertaker has~~

~~acquired the replacement land and [insert name of relevant body] has certified that a scheme for~~

~~the provision of the replacement land as [common/open space/fuel or field garden allotment] has~~

~~been implemented to its satisfaction.~~

~~49~~

~~(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in~~

~~[insert name of relevant body] subject to the same rights, trusts and incidents as attached to the~~

~~special category land; and the special category land shall be discharged from all rights, trusts and~~

~~incidents to which it was previously subject.~~

~~(3) In this article—~~

~~“the special category land” means the land identified as forming part of a common, open~~

~~space, or fuel or field garden allotment in the book of reference and on the plan entitled~~

~~“Special Category Land Plan” attached to the land plan, which may be acquired compulsorily~~

~~under this Order and for which replacement land is to be provided; and~~

~~“the replacement land” means the land identified in the book of reference and on the plan~~

~~entitled “Replacement Land Plan” attached to the land plan.~~

~~Statutory undertakers~~

~~38. The undertaker may—~~

~~(a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan~~

~~within the limits of the land to be acquired and described in the book of reference;~~

~~(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the [insert name] plan and described in the book of reference; and~~

~~(c) acquire compulsorily the new rights over land belonging to statutory undertakers shown~~

~~on the [insert name] plan and described in the book of reference.~~

~~Apparatus and rights of statutory undertakers in stopped-up streets~~

~~39.— (1) Where a street is stopped up under article 11 (stopping up of streets) any statutory~~

~~utility whose apparatus is under, in, on, along or across the street shall have the same powers and~~

~~rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not~~

~~been made.~~

~~(2) Where a street is stopped up under article 11 any statutory utility whose apparatus is under,~~

~~in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker~~

~~shall—~~

~~(a) remove the apparatus and place it or other apparatus provided in substitution for it in such~~

~~other position as the utility may reasonably determine and have power to place it; or~~

~~(b) provide other apparatus in substitution for the existing apparatus and place it in such~~

~~position as described in sub-paragraph (a).~~

~~(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory~~

~~utility an amount equal to the cost reasonably incurred by the utility in or in connection with—~~

~~(a) the execution of the relocation works required in consequence of the stopping up of the~~

~~street; and~~

~~(b) the doing of any other work or thing rendered necessary by the execution of the relocation~~

~~works.~~

~~(4) If in the course of the execution of relocation works under paragraph (2)—~~

~~(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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 to be necessary, then, if it involves cost in the~~

44. Regulation 6 of the Hedgerows Regulations 1997 is to be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(i) the following—

“or (k) to the extent specified in and for the purpose of carrying out development which has been authorised by an order granting development consent made pursuant to the Planning Act 2008.”.

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

Date Name
Department for Business, Energy and Industrial Strategy

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the City and County of Swansea—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, consisting of a generating station with a gross rated electrical output of up to 299MWe comprising all or any of the work numbers in this schedule or any part of any work number in this schedule —

Work No. 1A development comprising—

- (a) 1 gas turbine generator;
- (b) 1 exhaust gas emission flue stack; and
- (c) external fin fan cooler(s).

Work No. 1B development comprising—

- (a) a control room/office/workshop;
- (b) telemetry apparatus and cabling;
- (c) above ground raw water and fire water storage tanks and associated infrastructure;
- (d) fire-fighting equipment, buildings and distribution pipework;
- (e) a demineralised water storage tank;
- (f) an emergency generator including fuel storage tank;
- (g) attenuation pond(s) and connection to drain system;
- (h) chemical storage facilities, other minor infrastructure and auxiliaries/services;
- (i) pipework, pipe runs and pipe racks; and
- (j) cathodic protection test/transformer rectifier unit.

Work No. 1C development comprising—

- (a) an on-site natural gas receiving station and gas treatment compound containing—
 - (i) a pipeline inspection gauge (PIG) receiving facility;
 - (ii) isolation valves, metering, heating, filtering, compression, pressure regulation equipment;
 - (iii) electricity supply kiosks;
 - (iv) emergency generator including fuel storage tank;
 - (v) Joule-Thomson boiler(s); and
 - (vi) control and instrumentation kiosks.
- (b) gas pipelines and telemetry cabling and cathodic protection test/ transformer rectifier unit.

Work No. 1D development comprising a transformer compound including generator step up transformer, unit transformers, bus bar connections and other plant and structures required to manage the transmission of electricity.

Work No. 1E development comprising—

- (a) security infrastructure, including cameras, perimeter fencing and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns;
- (c) internal roadways, car parking, pedestrian network, cycle parking, hardstanding and water treatment trailers;

- (d) a maintenance compound including hardstanding and welfare and administration facilities;
- (e) site drainage and waste management infrastructure, including relocation of existing site drainage as required;
- (f) electricity, water, wastewater and telecommunications and other services including high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;
- (g) landscaping including tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation; and
- (h) other ancillary equipment.

Work No. 1F development comprising hardstanding area for maintenance laydown and welfare and administration facilities.

Work No. 2 development comprising a new permanent means of access from the B4489 to numbered work 1 including permanent road surface and kerb stones, safety barrier(s), signing and road markings, drainage works (including culverts), tree, hedge and fence removal and installation of new signing, gates and fencing, telecommunications connections and other services, temporary car parking and temporary construction compound and other incidental works.

Work No. 3 development comprising a temporary construction laydown area including areas of hardstanding and site and welfare offices and workshop, and infrastructure to enable plant and vehicle crossings of existing underground utilities.

Work No. 4 development comprising landscaping and ecological mitigation area including tree planting and ecological enhancement and boundary fencing.

Work No. 5A development comprising earthworks and ground raising in connection with Work No. 1.

Work No. 5B development comprising earthworks in connection with Work No. 2.

and such other buildings, structures, works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1 but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

Time limits

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

Detailed Design

2.—(1) The authorised development must be carried out in accordance with the approved plans, inclusive of any limits of deviation, bearing the references listed below and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any requirement (as the same may be amended by approval of the relevant planning authority pursuant to requirement 28(1))—

Table 1

<u>the works plans</u>	<u>Submission document reference number 2.3</u>
<u>rights of way, streets and access plan</u>	<u>Submission document reference number 2.4</u>

(2) The authorised development must be carried out within the parameters specified in Table 2 (as the same may be amended by approval of the relevant planning authority pursuant to requirement 28(1))—

Table 2

<u><i>Building or structure</i></u>	<u><i>Maximum height (metres above 90 metres above ordnance datum)</i></u>	<u><i>Minimum height (metres above 90 metres above ordnance datum)</i></u>	<u><i>Maximum length (metres)</i></u>	<u><i>Maximum width (metres)</i></u>
<u>The gas turbine generator (including gas turbine, generator, air inlet filter house, air inlet duct, exhaust diffuser, and auxiliaries such as lube oil system, air dryers, fuel gas filter package,</u>	<u>27</u>	<u>=</u>	<u>50</u>	<u>40</u>

<u>Building or structure</u>	<u>Maximum height (metres above 90 metres above ordnance datum).</u>	<u>Minimum height (metres above 90 metres above ordnance datum).</u>	<u>Maximum length (metres)</u>	<u>Maximum width (metres)</u>
<u>instrument air system, compressor washing) (Part of numbered work 1A)</u>				
<u>The exhaust gas emission flue stack (part of numbered work 1A)</u>	<u>45</u>	<u>35</u>	<u>=</u>	<u>12</u>
<u>Control room/office/workshop (part of numbered work 1B)</u>	<u>7</u>	<u>=</u>	<u>45</u>	<u>25</u>
<u>Emergency generator (part of numbered work 1B)</u>	<u>6</u>	<u>=</u>	<u>13</u>	<u>5</u>
<u>Natural gas receiving station (including compression station, emergency generator, Joule-Thompson boilers and other auxiliary control cabinets) (part of numbered work 1C)</u>	<u>10</u>	<u>=</u>	<u>70</u>	<u>50</u>
<u>Gatehouse (part of numbered work 1E)</u>	<u>4.5</u>	<u>=</u>	<u>9</u>	<u>8</u>
<u>Demineralised water tank</u>	<u>7</u>	<u>=</u>	<u>7</u>	<u>7</u>

<u>Building or structure</u>	<u>Maximum height (metres above 90 metres above ordnance datum).</u>	<u>Minimum height (metres above 90 metres above ordnance datum).</u>	<u>Maximum length (metres)</u>	<u>Maximum width (metres)</u>
(part of numbered work 1B)				
Fire water tank (part of numbered work 1B)	<u>15</u>	=	<u>15</u>	<u>15</u>
Pipeline inspection gauge facility (part of numbered work 1C)	<u>3</u>	=	<u>35</u>	<u>35</u>
Fin Fan Coolers (part of numbered work 1A)	<u>10</u>		<u>28</u>	<u>14</u>
Transformer compound (including generator step up transformer, unit and other transformers, connection to underground cable and associated equipment) (part of numbered work 1D)	<u>15</u>	=	<u>65</u>	<u>60</u>

(3) No part of numbered work 5 may commence until details and sections of the proposed site levels for the relevant part of numbered work 5 have been submitted to and approved in writing by the relevant planning authority.

(4) No part of numbered work 1 may commence until, for the relevant part of numbered work 1, details of the layout, scale and external appearance of the numbered work have been submitted to and approved in writing by the relevant planning authority.

(5) Work numbered 1 must be designed substantially in accordance with the relevant design principles contained within the design principles statement.

Provision and maintenance of landscaping

3.—(1) Numbered works 1 and 2 of the authorised development may not commence until, for that numbered work, a written landscaping plan (including an implementation timetable) has been submitted to and approved in writing by the relevant planning authority. The landscaping

plan must be substantially in accordance with the landscaping mitigation proposals set out in the outline landscape and ecological mitigation strategy, and include details of all proposed hard and soft landscaping works.

(2) All landscaping works must be carried out in accordance with the landscaping plan approved under this requirement 3 and to a reasonable standard in accordance with any relevant recommendations of any appropriate British Standard(s) or other recognised codes of good practice set out in the outline landscape and ecological mitigation strategy.

(3) All landscaping works and restoration must be carried out in accordance with the implementation timetable approved in the landscaping plan.

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

Highway accesses

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

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

Fencing and other means of enclosure

5.—(1) Each of numbered works 1 to 5 of the authorised development may not commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure for that numbered work (or for numbered work 5, the relevant part of numbered work 5) have been submitted to and approved in writing by the relevant planning authority.

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

(3) Any temporary fencing must be removed by the end of three months beginning with the date of completion of construction of the authorised development.

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

Surface and foul water drainage

6.—(1) Numbered works 1, 2 and 3 of the authorised development may not commence until, for that numbered work, a written surface and foul water drainage plan (including means of pollution control) has been submitted to and approved in writing by the relevant planning authority. The surface and foul water drainage plan must be in substantial accordance with the principles set out in the outline drainage strategy.

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

Surface water management plan

7.—(1) Numbered works 1, 2, 3 and 5 of the authorised development may not commence until, for that numbered work, a written surface water management plan has been submitted and approved in writing by the relevant planning authority. The surface water management plan must be in substantial accordance with the principles set out in the outline surface water management plan.

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

Pre-construction ecological constraints survey

8.—(1) No numbered work of the authorised development may commence until for that numbered work pre-construction ecological constraints surveys have been undertaken to confirm that there are no badgers setts, otters or water voles present in the relevant part of the site prior to the commencement of construction of that numbered work.

(2) The pre-construction ecological constraints survey reports must be submitted to and approved by the relevant planning authority, in consultation with Natural Resources Wales. Survey reports may be submitted and approved separately for each relevant species.

(3) In the event that the pre-construction ecological constraints survey reports record the presence of badger setts, otter or water vole on the relevant part of the site, the report must set out any mitigation measures required.

(4) All mitigation proposed in the pre-construction ecological constraints survey reports must be implemented in accordance with the approved details prior to construction of the relevant work.

Ecological management plan

9.—(1) No numbered work of the authorised development may commence until a written ecological management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority. The ecological management plan must be in substantial accordance with the ecological mitigation proposals set out in the outline landscape and ecological mitigation strategy save to the extent that modifications are necessary to reflect the findings of any pre-construction ecological constraints surveys.

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

Invasive species survey and remediation

10.—(1) No numbered work of the authorised development may commence until an invasive species survey covering the relevant part of the site for that numbered work affected by the relevant work has been undertaken by a suitably qualified and experienced person or body and (where any invasive non-native species are found to be present) a protocol, including an associated management, maintenance and monitoring scheme, has been submitted to and approved in writing by the relevant planning authority. The protocol shall detail the containment, control and removal of any species on the relevant part of the site and shall be substantially in accordance with the recommendations set out in Appendix F of the outline landscape and ecological mitigation strategy.

(2) No other works in connection with the development hereby approved shall commence unless all the measures set out in the approved protocol have been carried out in accordance with the approved protocol.

Bat Method Statement

11.—(1) No numbered work of the authorised development may commence until pre-construction checks substantially in accordance with those outlined in Appendix C of the outline landscape and ecological mitigation strategy have been undertaken on trees and hedgerows with potential suitability for supporting roosting bats.

(2) Where any trees and hedgerows proposed for removal are found to support roosting bats no works for the removal of such trees and/or hedgerows may be undertaken until a bat method statement outlining additional mitigation measures to avoid impacts on roosting bats has been submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales.

(3) The authorised development shall be carried out in accordance with the approved Bat Method Statement.

Reptile Method Statement

12.—(1) No numbered work of the authorised development may commence until a reptile method statement detailing the location and specification of fencing, timing and methodology for the management of reptiles (which must be substantially in accordance with the measures set out in Appendix A of the outline landscape and ecological mitigation strategy) has been submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales.

(2) No numbered work shall commence until for each relevant numbered work all measures specified in the approved reptile method statement have been completed.

Archaeology

13.—(1) Numbered works 1, 2, 3 and 5 of the authorised development may not commence until a written scheme for the investigation of areas of archaeological interest covering that numbered work has been submitted to and approved in writing by the relevant planning authority.

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

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body.

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

(5) A copy of the watching brief report must be submitted to the relevant planning authority within two months of the archaeological fieldwork being completed. In the event that archaeological assets are discovered during the watching brief, a programme for preparation and submission of an interpretative report must be agreed with the relevant planning authority and an interpretative report submitted to the relevant planning authority in accordance with the agreed programme.

Site investigation

14.—(1) Numbered works 1, 2 and 5 of the authorised development may not commence until a site investigation report informed by intrusive ground conditions survey covering an assessment of the geotechnical and geo-environmental properties of the substrata for the relevant land for that numbered work has been submitted to and approved in writing by the relevant planning authority.

(2) Where identified as necessary by the site investigation report the relevant part(s) of numbered works 1, 2 and 5 of the authorised development may not commence until a mining risk assessment and/or a foundation risk assessment has been submitted to and approved in writing by the relevant planning authority.

(3) The reports should be undertaken by a suitably qualified person or body and should be sufficient to establish if any ground precautions are necessary in relation to the design and construction of numbered works 1 and/or 2 and/or 5 in order to minimise any risk of damage which might arise as a result of ground conditions.

(4) A remediation method statement must be submitted, if required, and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales.

(5) Each of numbered works 1, 2 and 5 must be carried out in accordance with the measures set out in the approved remediation method statement(s).

Mineral Resources Survey

15.—(1) Where the site investigation report identifies the presence of minerals numbered works 1, 2 and 5 of the authorised development may not commence until a minerals resources survey report covering that numbered work has been submitted to and approved in writing by the relevant planning authority.

(2) The undertaker shall have regard to the approved mineral resources survey report when preparing the decommissioning strategy required under requirement 27 (Decommissioning Strategy).

Peat Management Plan

16.—(1) Where the site investigation report carried out in accordance with requirement 14 confirms the presence of peat affecting relevant part(s) of numbered works 1, 2, and 5, affected parts of numbered works 1, 2 and 5 may not commence until a peat management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority in consultation with Natural Resources Wales.

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

Construction environment management plan

17.—(1) No numbered work of the authorised development may commence until a construction environment management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales. The construction environment management plan must be substantially in accordance with the outline construction environmental management plan and must include the following—

- (a) community liaison;
- (b) complaints procedures;
- (c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise, vibration and lighting);
- (d) dust management measures;
- (e) site waste and materials management measures;
- (f) pollution control measures;
- (g) security measures and use of artificial lighting;
- (h) a protocol in the event that unexpected contaminated land is identified during ground investigation or construction; and

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

Dust management plan

18.—(1) No numbered work of the authorised development may commence until a dust management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales. The dust management plan must be substantially in accordance with the contents outlined in the outline construction environmental management plan.

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

Pollution prevention management plan

19.—(1) No numbered work of the authorised development may commence until a pollution prevention management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales. The pollution prevention management plan must be substantially in accordance with the contents outlined in the outline construction environmental management plan.

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

Waste and material management plan

20.—(1) No numbered work of the authorised development may commence until a waste and material management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural Resources Wales. The waste and material management plan must be substantially in accordance with the contents outlined in the outline construction environmental management plan.

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

Construction traffic management plan

21.—(1) No numbered work of the authorised development other than tree felling may commence until a construction traffic management plan covering that numbered work has been submitted to and approved in writing by the relevant planning authority in consultation with Welsh Government Transport and the Highways Authority. The construction traffic management plan must be substantially in accordance with the outline construction traffic management plan and is to include—

- (a) construction vehicle routing plans at an appropriate scale for all traffic including abnormal indivisible loads showing—
 - (i) swept path analysis from the point of entry onto the highway network to the Order land;
 - (ii) highway mitigation in respect of any identified constraints on vehicle movements such as embargo periods, route traffic sensitivity, temporary road works and other highway restrictions to be developed following consultation with the South Wales Trunk Road Agent, and, where relevant, referring to supporting HD19/03 safety audit documentation (as contained within the Design Manual for Roads and Bridges Volume 5 Section 2 Part 2 and as amended or replaced); and
 - (iii) land ownership boundaries for any required holding areas, passing areas and layover areas;
- (b) site access plans at an appropriate scale that include supporting HD19/03 safety audit documentation (as contained within the Design Manual for Roads and Bridges Volume 5 Section 2 Part 2 and as amended or replaced);
- (c) proposals for the management of junctions to and crossings of the public highway during delivery of abnormal indivisible loads;
- (d) proposals for the scheduling and timing of movements of delivery vehicles, to be developed following consultation with the Welsh Government Transport and potentially affected undertakers, and, in relation to any abnormal indivisible loads, details of vehicle parameters, number of vehicles in convoy size, dimensions (width, length, height) and weight (total vehicle with load and axel loading);
- (e) details of escorts for abnormal indivisible loads highlighting where and when along the route private vehicles, banksman and Police vehicles escorts will be used (including emergency contingencies);

- (f) proposals for temporary warning signs and banksman for abnormal indivisible loads, including provision of plan drawings and associated traffic signs schedule highlighting locations along the route where temporary traffic management (including cones and temporary signs) needs to be deployed;
 - (g) a methodology for undertaking a conditions survey of roads from point of entry onto the trunk road network to the Order land that may have a constraining impact on the abnormal indivisible load movements including the timescales for undertaking the surveys and the method(s) of reporting the findings to the relevant planning authority, comprehensive photographs and potential compensation arrangements;
 - (h) details of any temporary or permanent improvements to highways;
 - (i) proposals for the making good of any incidental damage to highways by construction traffic associated with the authorised development including street furniture, structures, drainage features, highway verge and carriageway surfaces;
 - (j) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during any of the activities, operations or works set out in Schedules 3, 4, 5 or 6; and
 - (k) proposals for the notification of occupiers of land adjacent to the construction traffic route of the scheduling and timing of abnormal indivisible load movements from the point of exit from the trunk road network to the Order land.
- (2) The construction traffic management plan must be implemented as approved for the entire duration of the construction period for that numbered work.
- (3) During the operation or decommissioning of numbered work 1 no abnormal indivisible loads must be transported into or out of the Order land without the prior written approval of the relevant planning authority in consultation with Welsh Government Transport.

Construction staff travel plan

22.—(1) No numbered work of the authorised development may commence until a travel plan for construction workers has been submitted to and approved by the relevant planning authority. The travel plan must be substantially in accordance with the outline construction staff travel plan.

(2) The travel plan must be carried out as approved during construction of the authorised development.

Construction hours

23.—(1) No construction work, or the delivery or removal of materials for construction work, must take place outside the hours of—

- (a) 0800 and 1800 hours on weekdays (excluding public holidays); and
- (b) 0800 and 1300 hours on Saturdays and public holidays.

(2) Sub-paragraph (1) does not prevent construction works, or the delivery or removal of materials, being carried out outside the hours set out in sub-paragraph (1) with the prior written approval of the relevant planning authority and does not apply to commissioning works required in advance of the date of final commissioning.

(3) Nothing in sub-paragraph (1) precludes a start-up period from 0730 to 0800 and a shut down period from 1800 to 1830 on weekdays (excluding public holidays) and a start-up period from 0730 to 0800 and a shut down period from 1300 to 1330 on a Saturday.

Dates of final commissioning, completion of construction and cessation

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

(2) The undertaker must notify the relevant planning authority in writing of the date of completion of construction as soon as reasonably practicable and in any event within three months after the occurrence of that date.

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

Control of noise during operational phase

25.—(1) Following the date of final commissioning, site-attributable noise arising from the operation of numbered work 1 must be limited at all times of day to the noise levels set out in column A of Table 3 measured at the coordinates set out in column B of Table 3—

Table 3

<u>A</u>		<u>Location</u>	<u>B</u> <u>Coordinates X</u>	<u>B</u> <u>Coordinates Y</u>
<u>Daytime Noise</u> <u>Limit BS 4142:2014</u> <u>rating level</u> <u>(dB LAR)</u>	<u>Night Time</u> <u>Noise Limit BS</u> <u>4142:2014 rating</u> <u>level (dB LAR)</u>			
<u>45</u>	<u>39</u>	<u>Cefn-betingau</u>	<u>266046</u>	<u>201482</u>
<u>41</u>	<u>40</u>	<u>Maes-eglwys</u>	<u>265438</u>	<u>200654</u>
<u>48</u>	<u>43</u>	<u>Llety Morfil</u> <u>Farm</u>	<u>264747</u>	<u>201105</u>
<u>45</u>	<u>41</u>	<u>Abergelli Farm</u>	<u>265125</u>	<u>201643</u>

(2) Noise measurements at or in close proximity to each of the identified locations must be undertaken in accordance with British Standard 7445 and submitted by the undertaker to the relevant planning authority within a three month period beginning with the date of final commissioning, including details of any remedial works and a programme for implementation should noise levels exceed the level specified in Table 3 above.

(3) Any remedial works must be carried out in accordance with the approved programme for implementation and the noise measurements must be repeated and submitted to the relevant planning authority for approval following completion of remedial works to demonstrate that the noise levels are within the limits set out in Table 3 above.

Control of artificial light emissions during operation

26.—(1) Numbered work 1 of the authorised development may not enter commercial operation until a written scheme for the management and mitigation of artificial light emissions has been submitted to and approved in writing by the relevant planning authority. The scheme must be substantially in accordance with the outline lighting strategy.

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

Decommissioning strategy

27.—(1) Unless otherwise agreed with the relevant planning authority, within twenty four months of the Order land ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis), a scheme for the demolition and removal of all parts of numbered work 1 situated above ground along with a proposed implementation timetable for decommissioning works must be submitted and approved in writing by the relevant planning authority.

(2) Subject to obtaining the necessary consents, the demolition and removal of numbered work 1 must be implemented in accordance with the approved scheme.

Amendments to approved details

28.—(1) With respect to the approved plans specified in requirement 2(1), the parameters specified in requirement 2 (Detailed Design) and any other plans, details, schemes or matters which require approval by the relevant planning authority pursuant to any other requirement (the “Approved Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Plans, Parameters, Details or Schemes are to be taken to include the amendments approved pursuant to this sub-paragraph (1).

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

STREETS SUBJECT TO PERMANENT AND TEMPORARY
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

Table 4

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>City and County of Swansea</u>	<u>Rhyd-y-pandy road</u>	<u>Creation of new access from Rhyd-y-pandy road including lowering the levels of the kerb and formation of new junction/bellmouth between the points marked C and D on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Footpath LC35A</u>	<u>Alteration/construction of new style/access to footpath between the points marked E and F on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed)</u>	<u>Construction over/removal of street (comprising part of numbered work 1) between the points marked K and L on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private track (unnamed) running south-east from Abergelli farm (known as “the gallops”)</u>	<u>Construction of crossing over private track (comprising part of numbered work 2) between the points marked K and M on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private track (unnamed) running south-east from Abergelli farm (known as “the gallops”)</u>	<u>Removal of street (comprising part of numbered work 1) between the points marked M and N on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Public footpath LC32</u>	<u>Creation of new access road (comprising part of numbered work 2) between the points marked P and Q on the rights of way, streets and access plan.</u>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>City and County of Swansea</u>	<u>Private access road (unnamed) from B4489 to Swansea North substation and Felindre gas compressor station</u>	<u>Creation of new access road (comprising part of numbered work 2) including the laying of new road surface and drainage works between points marked T and O on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private access road (unnamed) from B4489 to Swansea North substation and Felindre gas compressor station</u>	<u>Modification and widening of existing access (comprising part of numbered work 2) including widening of existing road surface and drainage works between the points marked W and T on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>B4489/Private access road (unnamed) from B4489 to Swansea North substation and Felindre gas compressor station</u>	<u>Widening of existing junction visibility splay at B4489 (comprising part of work numbered 2) between the points marked X and Y on the rights of way, streets and access plan.</u>

PART 2
TEMPORARY ALTERATION OF LAYOUT

Table 5

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>City and County of Swansea</u>	<u>Rhyd-y-pandy road</u>	<u>Creation of temporary construction access including the lowering of levels of the kerb and formation of junction/bellmouth between the points marked C and D on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Footpath LC35A</u>	<u>Alteration/construction of new style/access to footpath between the points marked E and F on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed)</u>	<u>Creation of crossing point(s) for temporary construction access within the Order land during construction between the points marked G and H on the rights of way, streets and access plan</u>
<u>City and County of Swansea</u>	<u>Footpath LC35B</u>	<u>Creation of crossing point(s) for temporary construction access within the Order land during construction between the points marked G and H on the rights of way, streets and access plan</u>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed)</u>	<u>Creation of crossing point(s) for temporary construction access within the Order land during construction between the points marked G and I on the rights of way, streets and access plan</u>
<u>City and County of Swansea</u>	<u>Private track running south-east from Abergelli farm (known as “the gallops”)</u>	<u>Creation of temporary construction compound (comprising part of work numbered 3) between the points marked J and M on the rights of way, streets and access plan.</u>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to alteration of layout</u>	<u>(3)</u> <u>Description of alteration</u>
<u>City and County of Swansea</u>	<u>Public Footpath LC32</u>	<u>Creation of crossing point for temporary construction access (comprising part of numbered work 2) between the points marked P and Q on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>B4489/Private access road (unnamed) from B4489 to Swansea North substation and Felindre gas compressor station</u>	<u>Temporary widening of existing junction visibility splays from B4489 between points marked X and Y on the rights of way, streets and access plan to provide access to works numbered 1 and 2.</u>

STREETS SUBJECT TO STREET WORKS

Table 6

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street Subject to Street Works</u>	<u>(3)</u> <u>Description of the street works</u>
<u>City and County of Swansea</u>	<u>Rhyd-y-pandy road</u>	<u>Works to enable the creation of a temporary construction access between the points marked C and D on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Rhyd-y-pandy road</u>	<u>Works to enable the creation of a new permanent access between the points marked C and D on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Public Footpath LC35A</u>	<u>Works between the points marked E and F of the rights of way, streets and access plan to enable the creation of a new permanent access.</u>
<u>City and County of Swansea</u>	<u>Public Footpath LC35B</u>	<u>Works for the installation and maintenance of a gas pipeline and crossing points for temporary internal road within the Order land between the points marked G and H on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed) running north-east from Abergelli farm to Rhyd-y-pandy road</u>	<u>Works for the installation and maintenance of a gas pipeline and crossing points for temporary internal road within the Order land between the points marked G and H on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed)</u>	<u>Works for the installation and maintenance of a gas pipeline and crossing points for temporary internal road within the Order land between the points marked G and I on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private track running south-east from Abergelli farm (known as “the gallops”)</u>	<u>Works for numbered work 3 to be constructed between the points marked J and M on the rights of way, streets and access plan.</u>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street Subject to Street Works</u>	<u>(3)</u> <u>Description of the street works</u>
<u>City and County of Swansea</u>	<u>Private track running south–east from Abergelli farm (known as "the gallops")</u>	<u>Works for the construction and maintenance of numbered work 2 between the points marked K and M on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed)</u>	<u>Works for the removal of street (comprising part of numbered work 1) between the points marked K and L on the rights of way, streets and access plan</u>
<u>City and County of Swansea</u>	<u>Public Footpath LC117</u>	<u>Works in the street comprising numbered work 2 and the installation and maintenance of an electrical cable between the points marked P and O on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed)</u>	<u>Works in the street comprising the installation and maintenance of an electrical cable between the points marked R and S on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private access road (unnamed) leading from B4489 to Swansea North substation and Felindre gas compressor station</u>	<u>Works in the street comprising numbered work 2 between the points marked T and W on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Public Footpath LC34</u>	<u>Works in the street comprising numbered work 2 to be installed and maintained between the points marked U and V on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>B4489 / Private access road (unnamed) from B4489 to Swansea North substation and Felindre gas compressor station</u>	<u>Temporary and permanent widening of existing junction visibility splay from B4489 comprising part of work numbered 2 between the points marked X and Y on the rights of way, streets and access plan.</u>

ACCESS

PART 1

THOSE PARTS OF ACCESSES TO BE MAINTAINED AT THE PUBLIC EXPENSE

Table 7

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street</u>	<u>(3)</u> <u>Description of relevant part of access</u>
<u>City and County of Swansea</u>	<u>Rhyd-y-pandy road</u>	<u>New road surface located in the area shown hatched blue between points C and D on the rights of way, streets and access plan.</u>

PART 2
THOSE PARTS OF ACCESSES TO BE MAINTAINED BY THE STREET
AUTHORITY

Table 8

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street</u>	<u>(3)</u> <u>Description of the relevant part of access</u>
<u>City and County of Swansea</u>	<u>New access from Rhyd-y-pandy road</u>	<u>New access from Rhyd-y-pandy road in the area shown hatched pink between the points marked C and D on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Footpath LC35A</u>	<u>New stile/access to footpath between the points marked E and F on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>New private access road (unnamed)</u>	<u>New access road comprising part of numbered work 2 and shown hatched pink between the points marked O and T on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private access road (unnamed) leading from B4489 to Swansea North substation and Felindre gas compressor station</u>	<u>Modified access road comprising part of numbered work 2 and shown hatched pink between the points marked T and W on the rights of way, streets and access plan.</u>

PART 3

THOSE WORKS TO RESTORE TEMPORARY ACCESSSES WHICH WILL BE
MAINTAINED AT THE PUBLIC EXPENSE

Table 9

<u>(1)</u> <u>Location</u>	<u>(2)</u> <u>Street</u>	<u>(3)</u> <u>Description of relevant part of access</u>
<u>City and County of Swansea</u>	<u>Temporary access from Rhyd- y-pandy road</u>	<u>Temporary construction access in the area shown hatched pink between the points marked C and D on the rights of way, streets and access plan.</u>

PART 4

THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE
MAINTAINED BY THE STREET AUTHORITY

Table 10

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street</u>	<u>(3)</u> <u>Description of relevant part of access</u>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed)</u>	<u>Crossing points for temporary internal road within the Order land between points G and H on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Footpath LC35B</u>	<u>Crossing points for temporary internal road within the Order land between points G and H on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed)</u>	<u>Crossing points for temporary internal road within the Order land between points G and I on the rights of way, streets and access plan.</u>
<u>City and County of Swansea</u>	<u>Private track running south- east from Abergelli farm (known as “the gallops”)</u>	<u>Work numbered 3 between points J and M on the rights of way, streets and access plan.</u>

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

Table 11

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to temporary prohibition or restriction of use</u>	<u>(3)</u> <u>Extent of temporary prohibition or restriction of use of streets</u>
<u>City and County of Swansea Council</u>	<u>Rhyd-y-pandy road</u>	<p><u>Prohibition/restriction:</u> <u>between points marked A and B</u> on the rights of way, streets and access plan, being approximately 440 metres</p> <p><u>Purpose of the Prohibition/restriction:</u> temporary restrictions of the use of the street, including the use of traffic management measures (erection of temporary barriers and stop/go board traffic control or two way traffic lights) and temporary speed restrictions in order to facilitate development necessary for the authorised development that takes place within the Order land</p>
<u>City and County of Swansea Council</u>	<u>Rhyd-y-pandy road</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked C and D</u> on the rights of way, streets and access plan, being approximately 139 metres</p> <p><u>Purpose of the Prohibition/Restriction:</u> Temporary closure(s) of part of the street temporary closures and restrictions of the use of the street, including the use of traffic management measures (erection of temporary barriers and stop/go board traffic control or two way traffic lights) and temporary speed restrictions in order to facilitate development necessary for the authorised development that takes place within the Order land</p>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to temporary prohibition or restriction of use</u>	<u>(3)</u> <u>Extent of temporary prohibition or restriction of use of streets</u>
<u>City and County of Swansea</u>	<u>Public footpath LC35A</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked E and F</u> on the rights of way, streets and access plan, being approximately 35 metres</p> <p><u>Purpose of the Prohibition/Restriction:</u> Temporary closure(s) of all or part of the footpath and restriction of the use of the footpath at any time in order to facilitate development necessary for the authorised development that takes place within the Order land</p>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed) running north-east from Abergelli farm to Rhyd-y-pandy road</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked G and H</u> on the rights of way, streets and access plan, being approximately 50 metres</p> <p><u>Purpose of the Prohibition/Restriction:</u> Temporary closure(s) of all or part of the street and restriction of the use of the street at any time in order to facilitate development necessary for the authorised development that takes place within the Order land</p>
<u>City and County of Swansea</u>	<u>Public footpath LC35B</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked G and H</u> on the rights of way, streets and access plan, being approximately 50 metres</p> <p><u>Purpose of the Prohibition/Restriction:</u> Temporary closure(s) of all or part of the footpath and restriction of the use of the footpath at any time in order to facilitate development necessary for the authorised development that takes place within the Order land</p>
<u>City and County of Swansea</u>	<u>Private road/track (unnamed)</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked G and I</u> on the rights of way, streets and access plan, being approximately 57 metres</p>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to temporary prohibition or restriction of use</u>	<u>(3)</u> <u>Extent of temporary prohibition or restriction of use of streets</u>
		<p><u>Purpose of the Prohibition/Restriction:</u> <u>Temporary closure(s) of all or part of the street and restriction of the use of the street at any time in order to facilitate development necessary for the authorised development that takes place within the Order land</u></p>
<u>City and County of Swansea</u>	<u>Private track running south–east from Abergelli farm (known as “the gallops”)</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked J and M on the rights of way, streets and access plan, being approximately 402 metres</u></p> <p><u>Purpose of the Prohibition/Restriction:</u> <u>Temporary closure(s) of all or part of the street and restriction of the use of the street at any time in order to facilitate the construction of numbered works 1, 2 and 3.</u></p>
<u>City and County of Swansea</u>	<u>Public Footpath LC117</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked P and Q on the rights of way, streets and access plan, being approximately 76 metres</u></p> <p><u>Purpose of the Prohibition/Restriction:</u> <u>Temporary closure(s) of all or part of the footpath and restriction of the use of the footpath at any time in order to facilitate the construction of numbered works 1, 2 and 3.</u></p>
<u>City and County of Swansea</u>	<u>Private access road (unnamed) leading from B4489 to Swansea North substation and Felindre gas compressor station</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked R and S on the rights of way, streets and access plan, being approximately 39 metres</u></p>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to temporary prohibition or restriction of use</u>	<u>(3)</u> <u>Extent of temporary prohibition or restriction of use of streets</u>
		<p><u>Purpose of the Prohibition/Restriction:</u> <u>Temporary closure(s) of all or part of the road and restriction of the use of the road in order to facilitate development necessary for the authorised development that takes place within the Order land</u></p>
<u>City and County of Swansea</u>	<u>Private access road (unnamed) leading from B4489 to Swansea North substation and adjacent Gas Compressor Station</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked T and W on the rights of way, streets and access plan, being approximately 852 metres</u></p> <p><u>Purpose of the Prohibition/Restriction:</u> <u>Temporary closure(s) of all or part of the street and restriction of the use of the street at any time in order to facilitate the construction of numbered works 1, 2 and 3.</u></p>
<u>City and County of Swansea</u>	<u>Public Footpath LC34</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked U and V on the rights of way, streets and access plan, being approximately 35 metres</u></p> <p><u>Purpose of the Prohibition/Restriction:</u> <u>Temporary closure(s) of all or part of the footpath and restriction of the use of the footpath at any time in order to facilitate the construction of numbered works 1, 2 and 3.</u></p>
<u>City and County of Swansea</u>	<u>B4489</u>	<p><u>Prohibition/restriction:</u> <u>between the points marked Z and AA on the rights of way, streets and access plan, being approximately 129 metres</u></p>

<p style="text-align: center;"><u>(1)</u> <u>Area</u></p>	<p style="text-align: center;"><u>(2)</u> <u>Street subject to temporary prohibition or restriction of use</u></p>	<p style="text-align: center;"><u>(3)</u> <u>Extent of temporary prohibition or restriction of use of streets</u></p>
		<p><u>Purpose of the Prohibition/restriction:</u> <u>temporary restrictions of the use of the street, including the use of traffic management measures (erection of temporary barriers and stop/go board traffic control or two way traffic lights) and temporary speed restrictions in order to facilitate the construction of numbered works 1, 2 and 3.</u></p>

SCHEDULE 7

Article 12

STREETS TO BE STOPPED UP

Table 12

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street to be stopped up</u>	<u>(3)</u> <u>Extent of stopping up</u>
<u>City and County of Swansea</u>	<u>Private road/track</u>	<u>From the point marked K to the point marked L on the rights of way, streets and access plan, being approximately 278 metres</u>
<u>City and County of Swansea</u>	<u>Private road/tracks running south-east from Abergelli farm (known as “the gallops”)</u>	<u>From the point marked M to the point marked N on the rights of way, streets and access plan, being approximately 355 metres</u>

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

Compensation enactments

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

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

(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(2)—

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

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A (5A) (relevant valuation date) of the 1961 Act, for (a) and (b) substitute—

“(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act; and

(b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 9 of Schedule 8 to the Abergelli Gas Fired Generating Station Order 201[X] to acquire an interest in the land, and”

Application of the 1965 Act

4.—(1) For the purposes of Article 26 only the 1965 Act is subject to the modifications in sub-paragraph 3(2).

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

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

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

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(a) 1973 c.26.

(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 or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

6. Section 11 of the 1965 Act (powers of entry) is modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on that date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

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

9. For schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

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

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

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

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

Determination by Upper Tribunal

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

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

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

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

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

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

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

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

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 9

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 13

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
<u>Land at Abergelli Fach Farm, Felindre, Swansea</u>	4A	<u>Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land</u>
<u>Land at Abergelli Fach Farm, Felindre, Swansea</u>	5A	<u>Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land</u>
<u>Land at Abergelli Fach Farm, Felindre, Swansea</u>	5B	<u>Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land</u>
<u>Land at Abergelli Fach Farm, Felindre, Swansea</u>	6A	<u>Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land</u>
<u>Land at Abergelli Fach Farm, Felindre, Swansea</u>	6B	<u>Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land</u>
<u>Land at Abergelli Fach Farm, Felindre, Swansea</u>	7A	<u>Temporary use to facilitate construction of other development necessary for the authorised development that takes place within the Order land</u>
<u>Land at Abergelli Fach Farm, Felindre, Swansea</u>	7B	<u>Temporary use to facilitate construction for numbered works 1, 2, 3 and 5 and other development necessary for the authorised development that takes place within the Order land</u>
<u>Land at Abergelli Fach Farm, Felindre, Swansea</u>	7C	<u>Temporary use to facilitate construction for numbered works 1, 2, 3 and 5 and other development necessary for the authorised development that takes place within the Order land</u>

<i>(1)</i> <u>Location</u>	<i>(2)</i> <u>Number of land shown on land plans</u>	<i>(3)</i> <u>Purpose for which temporary possession may be taken</u>
<u>Land at Abergelli Fach Farm, Felindre, Swansea</u>	<u>11B</u>	<u>Temporary use to facilitate construction for numbered works 1, 2, 3 and 5 and other development necessary for the authorised development that takes place within the Order land</u>
<u>Land forming part of Maeseglwys Farm, Felindre, Swansea</u>	<u>13A</u>	<u>Temporary use to facilitate construction for numbered works 1, 2, 3 and 5 and other development necessary for the authorised development that takes place within the Order land</u>
<u>Land forming part of Maeseglwys Farm, Felindre, Swansea</u>	<u>13B</u>	<u>Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land</u>
<u>Land forming part of Swansea North Substation, Felindre, Swansea</u>	<u>16A</u>	<u>Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land</u>
<u>Land forming part of disused historic access track to South of Gas Compressor Station, Felindre, Swansea</u>	<u>17A</u>	<u>Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land</u>
<u>Land forming part of disused historic access track to South of Gas Compressor Station, Felindre, Swansea</u>	<u>17B</u>	<u>Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land</u>
<u>Land forming part of Bryn Whilach Farm, Felindre, Swansea</u>	<u>18A</u>	<u>Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land</u>
<u>Land forming part of Bryn Whilach Farm, Felindre, Swansea</u>	<u>18B</u>	<u>Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land</u>

<u>(1)</u> <u>Location</u>	<u>(2)</u> <u>Number of land shown on land plans</u>	<u>(3)</u> <u>Purpose for which temporary possession may be taken</u>
<u>Land forming part of Swansea North Substation, Felindre, Swansea</u>	<u>19A</u>	<u>Temporary use to facilitate construction for numbered works 2 and 5 and other development necessary for the authorised development that takes place within the Order land</u>

SCHEDULE 10

Article 35

REMOVAL OF HEDGEROWS

Table 14

<i><u>(1) Location</u></i>	<i><u>(2) Identity of hedgerow shown on hedgerow plan</u></i>	<i><u>(3) Extent of hedgerow that may be removed</u></i>
<u>City and County of Swansea</u>	<u>Hedgerow B-B</u>	<u>Up to 210.47 metres</u>
<u>City and County of Swansea</u>	<u>Hedgerow C-C (to the extent within the Order Land)</u>	<u>Up to 10 metres</u>

PROTECTIVE PROVISIONSPART 1FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

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

2. In this part of this Schedule—

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

“apparatus” means—

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

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

“functions” includes powers and duties;

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

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

(b) 1989 c.29. Section 64 was amended by the Utilities Act 2000 (c.27); Schedule 6, paragraph 38(3). There are other amendments to this section that are not relevant to this Order.

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

(d) 1991 c.56. Section 102 was amended by sections 96(1)(a), 96(1)(b), 96(1)(c), 96(1)(d) and 96(1)(e) of the Water Act 2003 c.37 and paragraph 90 of Schedule 7 to the Water Act 2014 c.21.

“utility undertaker” means—

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

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

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

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

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

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43 (arbitration),

(a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27). Section 48 was amended by paragraph 1 of Schedule 6 to the Gas Act 1995 (c.45).

and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

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

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

7.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

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

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph (3), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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

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

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

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

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

subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

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

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

~~execution of the relocation works~~ 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 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by the virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

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

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

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

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

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

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it

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

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

PART 2
FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS

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

(2) In this part of this Schedule—

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

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

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

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

“network” means—

- (a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and
 - (b) a network which the Secretary of State is providing or proposing to provide;
- “operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

13. The exercise of the powers of [article 31 \(statutory undertakers\)](#) is subject to Part 10 of Schedule 3A of the 2003 Act.

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,
the undertaker must bear and pay [the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.](#)

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

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

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under [article 43 \(arbitration\)](#).

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

(a) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30)

(b) added by Schedule 1 of the Digital Economy Act 2017 (c.30)

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

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

PART 3
FOR THE PROTECTION OF NATIONAL GRID

Application

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

Interpretation

18. In this Part of this Schedule—

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

“apparatus” means—

(a) electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid;

(b) mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

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

“functions” includes powers and duties;

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

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

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

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

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

19. Except for paragraphs 20 (apparatus in streets subject to temporary prohibition or restriction), 24 (retained apparatus: protection), 25 (retained apparatus: protection), 26 (expenses) and 27 (indemnity) this Schedule does not apply to apparatus in respect of which the relations

(a) 1989 c.29.

between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

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

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

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

Acquisition of land

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

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

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

Removal of apparatus

22.—(1) If, in the exercise of the agreement reached in accordance with paragraph 21 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 23(1) below) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

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

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

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration under paragraph 31 and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 43 (arbitration) of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

24.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works specified in National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" that are within the proximities described therein to any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) or otherwise, the undertaker must submit to National Grid a plan.

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

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid’s “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22”.)
- (3) The undertaker must not commence any works to which sub-paragraph (1) and (2) applies until National Grid has given written approval of the plan so submitted.
- (4) Any approval of National Grid required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld.
- (5) In relation to a work to which sub-paragraphs (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works executed under sub-paragraphs (1) or (2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.
- (7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid’s satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days’ notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).
- (8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (7) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).
- (9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works comprising the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—
- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.
- (11) At all times when carrying out any works authorised under the Order comply with National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22” and the Health and Safety Executive’s “HS(~G)47 Avoiding Danger from underground services”.
- (12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 26.

(13) The plans submitted to National Grid by the undertaker pursuant to paragraph (1) and/or paragraph 25(1) must be sent to [NAME] at [EMAIL ADDRESS] or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Retained apparatus: protection of National Grid as Electricity Undertaker

25.—(1) Not less than 56 days before the commencement of any authorised development under this Order that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) or otherwise and to which sub-paragraph (2)(a) or (2)(b) applies, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

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

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

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

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

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

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

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

(6) In relation to a work to which sub-paragraphs (1), (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose

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

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1), (2), (3) or (6) (except in an emergency).

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

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

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

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

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

Expenses

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

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 22(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

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

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

~~-50~~

~~may be, the amount which, apart from this paragraph, would be payable to the statutory utility by~~

~~virtue of paragraph (3) shall be reduced by the amount of that excess.~~

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

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

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

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

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

Indemnity

27.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those

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

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 7 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (b) shall be subject to the full terms of this Schedule including this paragraph 27 in respect of such new apparatus.

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

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 27 applies. If requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 27 for claims reasonably incurred by National Grid.

Enactments and agreements

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

Co-operation

29. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 22(2) and paragraphs 24 or 28) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party’s operations.

Access

30. If in consequence of the agreement reached in accordance with paragraph 21(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

31. Save for differences or disputes arising under paragraphs 22(2), 22(4), 23(1), 24 and 25 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 43 (arbitration) of the Order.

PART 4
FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED
(SOUTH WALES) PLC

Application

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

Interpretation

33. In this Part of this Schedule—

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

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

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

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

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

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

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

Precedence of 1991 Act in respect of apparatus in streets

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

No acquisition or extinguishment except by agreement

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

Removal of apparatus

36.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation 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 43 (arbitration) of the Order and after the grant to WPD of any alternative rights, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of Schedule 11.

37.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are within 3 metres of any apparatus, the removal of which has not been required by the undertaker under paragraph 36(2), the undertaker must submit to WPD a plan, section and description of the works to be executed. For the avoidance of doubt, if any works referred to require any diversion or require WPD to obtain any alternative rights, the undertaker must give WPD sufficient notice to obtain any such alternative rights and not commence works of the type described unless or until any such alternative rights have been obtained.

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

(3) Any requirements made by WPD under sub-paragraph (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 it.

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

(5) Nothing in this paragraph 37 precludes the undertaker from submitting at any time or from time to time, but in no case less than the reasonable period provided for in sub-paragraph (3) before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

Expenses and costs

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

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

(3) If in accordance with the provisions of this Part of this Schedule—
~~consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.~~

~~(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed~~

~~more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.~~

~~(7) Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway~~

~~works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act,~~

~~but instead—~~

~~(a) the allowable costs of the relocation works shall be determined in accordance with section~~

~~85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and~~

~~(b) the allowable costs shall be borne by the undertaker and the statutory utility in such~~

~~proportions as may be prescribed by any such regulations.~~

~~(8) In this article—~~

~~“apparatus” has the same meaning as in Part 3 of the 1991 Act;~~

~~“relocation works” means work executed, or apparatus provided, under paragraph (2); and~~

~~“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public~~

~~communications provider as defined in section 151(1) of the Communications Act 2003(a).~~

~~Recovery of costs of new connections~~

~~40.—(1) Where any apparatus of a public utility undertaker or of a public communications~~

~~provider is removed under article 38 (statutory undertakers) any person who is the owner or~~

~~occupier of premises to which a supply was given from that apparatus shall be entitled to recover~~

~~from the undertaker compensation in respect of expenditure reasonably incurred by that person, in~~

~~consequence of the removal, for the purpose of effecting a connection between the premises and~~

~~any other apparatus from which a supply is given.~~

~~(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a~~

~~sewer is removed under article 38, any person who is—~~

~~(a) the owner or occupier of premises the drains of which communicated with that sewer; or~~

~~(b) the owner of a private sewer which communicated with that sewer;~~

~~shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably~~

~~incurred by that person, in consequence of the removal, for the purpose of making the drain or~~

~~sewer belonging to that person communicate with any other public sewer or with a private~~

~~sewerage disposal plant.~~

~~(3) This article shall not have effect in relation to apparatus to which article 39 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.~~

~~(4) In this paragraph—~~

~~(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.~~

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

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

~~Operations~~

~~Operation and use of railways~~

~~41.—(1) The undertaker may operate and use the railway and any other elements of the~~

~~authorised project as a system, or part of a system, of transport for the carriage of passengers and goods:~~

~~(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall~~

~~prejudice or affect the operation of Part 1 of the Railways Act 1993(a) (the provision of railway services):~~

~~Fares~~

~~42. The undertaker may demand, take and recover or waive such charges for carrying passengers~~

~~or goods on the railway comprised in the authorised project, or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.~~

~~Deemed consent under section 34 of the Coast Protection Act 1949~~

~~43. The undertaker is granted deemed consent under section 34 of the Coast Protection Act~~

~~1949(b) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule:~~

~~Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~

~~44. The undertaker is granted a deemed licence under Part 2 of the Food and Environment~~

~~Protection Act 1985(c) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule:~~

~~Felling or lopping of trees~~

~~45.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project,~~

~~or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or~~

~~shrub—~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the~~

~~authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised~~

~~project.~~

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

~~damage arising from such activity.~~

~~(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the~~

~~amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

~~(a) 1993 c.43. This Act has been amended by the Transport Act 2000 (c. 38), the Railways and Transport Safety Act 2003~~

~~(c.20) and the Railways Act 2005 (c.14). There are other amendments to this Act which are not relevant to this Order.~~

~~(b) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other~~

~~amendments to the 1949 Act which are not relevant to this Order.~~

~~(c) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the~~

~~Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this~~

~~Order.~~

~~52~~

~~Trees subject to tree preservation orders~~

~~46.—(1) The undertaker may fell or lop any tree described in Schedule J and identified on the~~

~~[insert name] plan, or cut back its roots if it reasonably believes it to be necessary in order to do so~~

~~to prevent the tree or shrub—~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the~~

~~authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

~~(2) In carrying out any activity authorised by paragraph (1)—~~

~~(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~

~~(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not~~

~~apply.~~

~~(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant~~

~~tree preservation order.~~

~~(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the~~

~~amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

~~Miscellaneous and general~~

~~Application of landlord and tenant law~~

~~47.—(1) This article applies to—~~

~~(a) any agreement for leasing to any person the whole or any part of the authorised project or~~

~~the right to operate the same; and~~

~~(b) any agreement entered into by the undertaker with any person for the construction,~~

~~maintenance, use or operation of the authorised project, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.~~

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

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

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

~~(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or~~

~~(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.~~

~~Operational land for purposes of the 1990 Act~~

~~48. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).~~

~~53~~

~~Defence to proceedings in respect of statutory nuisance~~

~~49.— (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—~~

~~(a) the defendant shows that the nuisance—~~

~~(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or~~

~~(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or~~

~~(b) the defendant shows that the nuisance—
(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25;
or
(ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.
(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall 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 project.~~

~~Protections of Interests~~

~~50. Schedule L to this Order has effect.~~

~~Certification of plans etc~~

~~51.— (1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision maker copies of—
(a) the book of reference;
(b) the land plan;
(c) the rights plan;
(d) the works plan;
(e) the sections; and
(f) any other plans or documents referred to in this Order,
for certification that they are true copies of the documents referred to in this Order.
(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.~~

~~(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.~~

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

~~54~~

~~Arbitration~~

~~52. Any difference under any provision of this Order, unless otherwise provided for, shall 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 [insert appropriate body].~~

~~Schedule A~~

~~AUTHORISED PROJECT~~

~~Part 1~~

~~AUTHORISED DEVELOPMENT~~

~~[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]~~

~~Part 2~~

~~ANCILLARY WORKS~~

~~[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which are not be the subject of a separate provision [article] in this Order.]~~

~~Schedule B~~

~~STREETS SUBJECT TO STREET WORKS~~

~~(1)-(2)~~

~~Area Street subject to street works~~

~~Schedule C~~

~~STREETS TO BE STOPPED UP~~

~~Part 1~~

~~STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED~~

~~(1)-(2)-(3)-(4)~~

~~Area Street to be stopped~~

~~up~~

~~Extent of stopping up New street to be substituted~~

~~Part 2~~

~~STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED~~

~~(1)-(2)-(3)~~

~~Area Street to be stopped up Extent of stopping up~~

~~-55~~

~~Schedule D~~

~~STREETS TO BE TEMPORARILY STOPPED UP~~

~~(1)-(2)-(3)~~

~~Area Street to be temporarily stopped up~~

~~Extent of temporary stopping~~

~~up~~

~~Schedule E~~

~~ACCESS TO WORKS~~

~~(1)-(2)~~

~~Area Description of access~~

~~Schedule F~~

~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED~~

~~(1)(2)~~

~~Area Number of land shown on land plan~~

~~Schedule G~~

~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~

~~(1)(2)(3)(4)~~

~~Area Number of land shown~~

~~on land plan~~

~~Purpose for which~~

~~temporary possession~~

~~may be taken~~

~~Relevant part of the~~

~~Authorised project~~

~~Schedule H~~

~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~

~~{Insert details of deemed consent}~~

~~Schedule I~~

~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION~~

~~ACT 1985~~

~~{Insert details of deemed licence}~~

~~-56~~

~~Schedule J~~

~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~

~~(1)(2)(3)~~

~~Type of tree Number[reference] of tree~~

~~shown on land plan~~

~~Work to be carried out~~

~~Schedule K~~

~~LEVEL CROSSINGS~~

~~{Insert details of level crossings}~~

~~Schedule L~~

~~PROTECTIVE PROVISIONS~~

~~{Insert details of protective provisions}~~

~~-SCHEDULE 3 Article 2~~

~~Model provisions for harbours~~

~~CONTENTS~~

~~Preliminary~~

~~1. Interpretation~~

~~2. Incorporation of the Harbours, Docks and Piers Clauses Act 1847~~

~~Principal powers~~

~~3. Development consent etc. granted by the Order~~

~~4. Period for completion of work~~

~~5. Limits of harbour~~

~~6. Maintenance of authorised project~~

~~7. Subsidiary works~~

~~8. Benefit of Order~~

~~9. Consent to transfer benefit of Order~~

~~Streets~~

~~10. Street works~~

~~11. Stopping up of streets~~

~~12. Temporary stopping up of streets~~

- 13. Access to works
- 14. Agreements with street authorities
- 15. Public rights of way
- 57
- Supplemental powers
- 16. Discharge of water
- 17. Protective work to buildings
- 18. Authority to survey and investigate the land
- 19. Removal of human remains
- 20. Right to dredge
- 21. Tidal works not to be executed without approval of Secretary of State
- 22. Abatement of works abandoned or decayed
- 23. Survey of tidal works
- 24. Lights on tidal works etc. during construction
- 25. Provision against danger to navigation
- 26. Permanent lights on tidal works
- 27. Rights to lease etc.
- Powers of acquisition
- 28. Compulsory acquisition of land
- 29. Compulsory acquisition of land—incorporation of the mineral code
- 30. Time limit for exercise of authority to acquire land compulsorily
- 31. Compulsory acquisition of rights
- 32. Private rights of way
- 33. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
- 34. Acquisition of subsoil only
- 35. Acquisition of land limited to subsoil lying more than 9 metres beneath surface
- 36. Acquisition of part of certain properties
- 37. Rights under or over streets
- 38. Temporary use of land for carrying out the authorised project
- 39. Temporary use of land for maintaining authorised project
- 40. Special category land
- 41. Statutory undertakers
- 42. Apparatus and rights of statutory undertakers in stopped up streets
- 43. Recovery of costs of new connections
- Miscellaneous and general
- 44. Deemed consent under section 34 of the Coast Protection Act 1949
- 45. Deemed licence under Part 2 of the Food and Environment Protection Act 1985
- 46. Felling or lopping of trees
- 47. Trees subject to tree preservation orders
- 48. Railway and navigation undertakings
- 49. Application of landlord and tenant law
- 50. Operational land for purposes of the 1990 Act
- 51. Defence to proceedings in respect of statutory nuisance
- 52. Protection of interests
- 53. Saving for Trinity House
- 54. Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994
- 55. Planning, etc. jurisdiction
- 58
- 56. Certification of plans etc

~~57. Arbitration~~
~~Schedule A~~
~~AUTHORISED PROJECT~~
~~Part 1~~
~~AUTHORISED DEVELOPMENT~~
~~Part 2~~
~~ANCILLARY WORKS~~
~~Schedule B~~
~~STREETS SUBJECT TO STREET WORKS~~
~~Schedule C~~
~~STREETS TO BE STOPPED UP~~
~~Part 1~~
~~STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED~~
~~Part 2~~
~~STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED~~
~~Schedule D~~
~~STREETS TO BE TEMPORARILY STOPPED UP~~
~~Schedule E~~
~~ACCESS TO WORKS~~
~~Schedule F~~
~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH~~
~~SURFACE~~
~~MAY BE ACQUIRED~~
~~Schedule G~~
~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~
~~Schedule H~~
~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~
~~Schedule I~~
~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION~~
~~ACT~~
~~1985~~
~~Schedule J~~
~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~
~~Schedule K~~
~~LIMITS OF HARBOUR~~
~~-59~~
~~Schedule L~~
~~PROTECTIVE PROVISIONS~~
~~Preliminary~~
~~Interpretation~~
~~1.—(1) In this Order—~~
~~“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(a);~~
~~“the 1961 Act” means the Land Compensation Act 1961(b);~~
~~“the 1965 Act” means the Compulsory Purchase Act 1965(c);~~
~~“the 1980 Act” means the Highways Act 1980(d);~~
~~“the 1990 Act” means the Town and Country Planning Act 1990(e);~~
~~“the 1991 Act” means the New Roads and Street Works Act 1991(f);~~
~~“the 2008 Act” means the Planning Act 2008(g);~~
~~“ancillary works” means the ancillary works described in Part 2 of Schedule A~~
~~(authorised~~

project) [and any other works authorised by the Order] and which are not development within the meaning of section 32 of the 2008 Act; “area of seaward construction activity” means the area of the sea within the Order limits shown on the land plan;

(a) 1847 c.27. Sections 24, 94 and 95 were repealed by the Statute Law (Repeals) Act 1993 (c.50); section 26 was repealed by section 56(4) of, and Schedule 11 to, the Courts Act 1971 (c.23); section 28 was amended by section 141 of, and Schedule 11 to, the Post Office Act 1969 (c.48); sections 54, 67 and 98 were amended by section 46 of the Criminal Justice Act 1982 (c.48); section 71 was amended by S.I.1987/37; section 91 was repealed by the Statute Law Revision Act 1894 (c.56); section 93 was repealed by the Statute Law Revision Act 1875 (c.66); and section 96 was repealed by the Perjury Act 1911 (c.6), section 17. There are other amendments to the 1847 Act which are not relevant to this Order.

(b) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

(c) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(d) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2);

~~1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted by and section 1(3) was amended by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.~~

~~(e) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3) and (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.~~

~~(f) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, **the Traffic Management Act 2004 (c.18).**~~

~~(g) 2008 c.29.~~

~~-60~~

~~“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~

~~“the authorised project” means **the authorised development and the ancillary works** authorised by this Order;~~

~~“the book of reference” means the book of reference certified by the decision maker as the book of reference for the purposes of this Order;~~

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

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

~~“conservancy authority” has the same meaning as in section 313 of the Merchant Shipping Act 1995(a);~~
~~“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;~~
~~“the decision maker” has the same meaning as in section 103 the 2008 Act;~~
~~“harbour” means the harbour constructed by the undertaker in pursuance of the powers conferred on them by [insert title of Act/Orders] Acts and Orders [insert dates of Act/Orders] and this Order and includes the open cut or channel also constructed under those powers, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with them, as from time to time existing;~~
~~“the harbourmaster” means the harbourmaster appointed under this Order;~~
~~“highway” and “highway authority” have the same meaning as in the 1980 Act;~~
~~“the land plan” means the plan certified as the land plan by the decision maker for the purposes of this Order;~~
~~“level of high water” means the level of mean high water springs;~~
~~“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;~~
~~“the Order limits” means the limits shown on the works plan within which the authorised project may be carried out;~~
~~“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(b);~~
~~“relevant planning authority” means—~~
~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~
~~(ii) a National Park Authority;~~
~~(iii) the Broads Authority; and~~
~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~
~~“rights plan” means the plan certified as the rights plan by the decision maker for the purposes of this Order;~~
~~“the sections” means the sections shown on the plan certified as the section drawings plan by the decision maker for the purposes of this Order;~~
~~“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;~~
~~(a) 1995 c.21. There are amendments to section 313 which are not relevant to this Order.~~

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

~~-61~~

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

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

~~“tidal work” means so much of any work authorised by this Order as is on, under or over tidal~~

~~waters or tidal lands below the level of high water;~~

~~“tree preservation order” has the meaning given in section 198 of the 1990 Act;~~

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

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

~~“undertaker” means the person who has the benefit of this Order in accordance with section~~

~~156 of the 2008 Act;~~

~~“the undertaking” means the harbour undertaking of the undertaker as authorised from time to~~

~~time;~~

~~“vessel” means every description of vessel, however propelled or moved, and includes a nondisplacement~~

~~craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or~~

~~adapted for movement through, in, on or over water and which is at the time in, on or over~~

~~water;~~

~~“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes,~~

~~sluices, sewers and passages through which water flows except a public sewer or drain; and~~

~~“the works plan” means the plan certified as the works plan by the decision maker for the purposes of this Order.~~

~~(2) References in this Order to rights over land include references to rights to do, or to place and~~

~~maintain, anything in, on or under land or in the air space above its surface.~~

~~(3) All points, directions, lengths, areas and other measurements stated in this Order are~~

~~approximate and distances between points on a work comprised in the authorised project shall be~~

~~taken to be measured along that work.~~

~~(4) Reference points specified in this Order shall be construed as references to Ordnance Survey~~

~~National Grid reference points.~~

~~[NOTE: In the case of off-shore development, which is outside the area of any planning authority,~~

it will be necessary to identify another appropriate body instead of the planning authority.]

~~Incorporation of the Harbours, Docks and Piers Clauses Act 1847~~

~~2.—(1) With the exception of sections 6 to 23, 25, 31, the proviso to section 32, sections 42, 45,~~

~~48 to 50, 60 to 63, 66 to 69, 73, 77 and 79 to 90, 92, 97 and 102, the 1847 Act is incorporated in~~

~~this Order subject to the modifications stated in paragraphs (2) and (3).~~

~~(2) In construing the 1847 Act as so incorporated—~~

~~(a) the expression “the special Act” means this Order;~~

~~(b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the~~

~~[insert relevant body].~~

~~(c) the expression “the harbour, dock or pier” means the authorised project within the area of~~

~~jurisdiction;~~

~~(d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;~~

~~(e) the expression “near the pier” does not extend beyond the area of jurisdiction;~~

~~(f) the expression “the harbour master”, in relation to the authorised project, means the~~

~~[insert relevant body].;~~

~~(g) the definition of “vessel” in article 1(1) shall be substituted for the definition in section 3~~

~~of the 1847 Act;~~

~~-62~~

~~(h) section 53 of the 1847 Act shall not be construed as requiring the harbourmaster to serve~~

~~written notice on the master of a vessel and directions given under that section may be communicated to the master of a vessel orally or otherwise; and~~

~~(i) any requirement to comply with a notice or direction given by the harbour master shall be~~

~~construed as including a requirement that, in complying with such notice or direction, a~~

~~person who is subject to the notice or direction shall also comply with any relevant notice~~

~~or direction given by the [insert relevant authority] or the harbour master in the exercise~~

~~by either or both of them of any function conferred by or under any enactment (including~~

~~this Order).~~

~~Principal powers~~

~~Development consent etc. granted by the Order~~

~~3. Subject to the provisions of this Order and to the requirements in the Schedule (requirements)~~

~~attached to this Order the undertaker is granted—~~

~~(a) development consent for the authorised development; and~~

~~(b) consent for the ancillary works;~~

~~to be carried out within the Order limits.~~

~~Period for completion of work~~

~~4. If the work is not completed within [five or such other period as specified] years from the coming into force of this Order or such extended time as the decision maker may on the application of the undertaker allow, then on the expiration of that period or such extended time (as the case may be) the rights by this Order granted to the undertaker for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.~~

~~Limits of harbour~~

~~5.—(1) The limits of the harbour within which the undertaker shall exercise jurisdiction shall be the area described in Schedule K to this Order and shown, for the purpose of identification only, [...]; and in the following provisions of this Order, references to the limits of the harbour shall be construed as references to the limits so described.~~

~~(2) Any references to the limits of the harbour contained in the [insert name of Acts] Acts and Orders or in any byelaws, orders or regulations made under those Acts or Orders, shall be construed as references to the limits described in Schedule L to this Order.~~

~~(3) [any necessary revocations].~~

~~Maintenance of authorised project~~

~~6. The undertaker may at any time maintain the authorised project and within the limits of the harbour, from time to time alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.~~

~~Subsidiary works~~

~~7.—(1) The undertaker may from time to time within the Order limits provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the work or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts,~~

~~-63~~

~~hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.~~

~~(2) Without prejudice to paragraph (1), the undertaker may within the Order limits carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the work including—~~

~~(a) works for the accommodation or convenience of vessels (including dolphins and pontoons); and~~

~~(b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.~~

~~(3) Article 3 of, and Parts [specify any required provisions in respect of permitted development right] 11 and 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(a) shall apply as if this Order were a grant of planning permission.~~

~~Benefit of Order~~

~~8. Subject to article 9 (consent to transfer benefit of Order), the provisions of articles [] and []~~

~~[specify relevant articles] shall have effect solely for the benefit of [specify person, body or class of person].~~

~~[NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2)(benefit of order granting development consent) of the 2008 Act).]~~

~~Consent to transfer benefit of Order~~

~~9.—(1) The undertaker may, with the consent of the [specify person or body]—~~

~~(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 so agreed.~~

~~(2) Where an agreement has been made in accordance with paragraph (1) references in this~~

~~Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.~~

~~(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer~~

~~or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as~~

~~would apply under this Order if those benefits or rights were exercised by the undertaker.~~

Streets

Street works

10.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule B (streets subject to street works) as is within the Order

limits and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) tunnel or bore under the street;

(c) place apparatus in the street;

(a) S.I. 1995/418. Relevant amendments were made by SI 1999/293, 1999/1783 and 2003/956. There are other amendments not relevant to this Order.

-64

(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 subparagraphs

(a), (b), (c) and (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) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out

under paragraph (1).

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

[NOTE: This article should not be used for the purposes of authorising street works that affect a

trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets

subject to street works). For any street works affecting a trunk road the undertaker should make

an application for a licence under section 50 of the 1991 Act.]

Stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the

carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2)

of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the

letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule C (being a street to be

stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this

article unless—

(a) the new street to be substituted for it, which is specified in column (4) of that Part of that

~~Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or~~
~~(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).~~
~~(3) No street specified in columns (1) and (2) of Part 2 of Schedule C (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.~~
~~(4) The condition referred to in paragraph (3) is that—~~
~~(a) the undertaker is in possession of the land; or~~
~~(b) there is no right of access to the land from the street concerned; or~~
~~(c) there is reasonably convenient access to the land otherwise than from the street concerned; or~~
~~(d) the owners and occupiers of the land have agreed to the stopping up.~~
~~(5) Where a street has been stopped up under this article—~~
~~(a) all rights of way over or along the street so stopped up shall be extinguished; and~~
~~(b) the undertaker may appropriate and use for the purposes of the authorised project so much of the site of the street as is bounded on both sides by land owned by the undertaker.~~
~~(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~
~~(7) This article is subject to article 42 (apparatus etc. of statutory undertakers).~~

~~-65~~

~~Temporary stopping up of streets~~

~~12.— (1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—~~
~~(a) divert the traffic from the street; and~~
~~(b) subject to paragraph (2), prevent all persons from passing along the street.~~
~~(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.~~
~~(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up;~~

~~alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.~~

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

~~(a) any street specified as mentioned in paragraph (3) without first consulting the street~~

~~authority; and~~

~~(b) any other street without the consent of the street authority which may attach reasonable~~

~~conditions to any consent.~~

~~(5) Any person who suffers loss by the suspension of any private right of way under this article~~

~~shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961~~

~~Act.~~

~~Access to works~~

~~13. The undertaker may, for the purposes of the authorised project—~~

~~(a) form and lay out means of access, or improve existing means of access, in the location~~

~~specified in columns (1) and (2) of Schedule E (access to works); and~~

~~(b) with the approval of the relevant planning authority after consultation with the highway~~

~~authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for~~

~~the purposes of the authorised project.~~

~~Agreements with street authorities~~

~~14.—(1) A street authority and the undertaker may enter into agreements with respect to—~~

~~(a) the construction of any new street including any structure carrying the street over or~~

~~under a [insert description of development] authorised by this Order;~~

~~(b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a~~

~~[insert description of development];~~

~~(c) any stopping up, alteration or diversion of a street authorised by this Order; or~~

~~(d) the carrying out in the street of any of the works referred to in article 10(1) (street works).~~

~~(2) Such an agreement may, without prejudice to the generality of paragraph (1)—~~

~~(a) make provision for the street authority to carry out any function under this Order which~~

~~relates to the street in question;~~

~~(b) include an agreement between the undertaker and street authority specifying a reasonable~~

~~time for the completion of the works; and~~

~~(c) contain such terms as to payment and otherwise as the parties consider appropriate.~~

~~Public rights of way~~

~~15.—(1) With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard~~

~~-66~~

~~defined in the implementation plan], [the section of] the public right of way (being a [insert one of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.~~

~~(2) With effect from [that same date] [insert later date] an alternative section of [insert description of right of way of that same type] as marked in [green] between the points [C] and [D] on the rights plan is created.~~

~~(3) In this article—~~

~~“implementation plan” means the written plan agreed between the undertaker and the local~~

~~highway authority for creation of the agreed alternative right of way to the defined standard;~~

~~and~~

~~“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.~~

~~Supplemental powers~~

~~Discharge of water~~

~~16.—(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 project and for that~~

~~purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.~~

~~(2) Any dispute arising from the making of connections to or the use of a public sewer or drain~~

~~by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).~~

~~(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain~~

~~except with the consent of the person to whom it belongs; and such consent may be given subject~~

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

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

~~(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but~~

~~such approval shall not be unreasonably withheld; and~~

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

~~(5) The undertaker shall 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.~~

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

~~(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(b) (offences of polluting water).~~

~~(8) In this article—~~

~~(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning~~

~~of section 57 of the Harbours Act 1964(e), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and~~

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

~~(b) 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) in Part 1 of Schedule 21 to S.I. 2007/3538.~~

~~(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5).~~

~~-67~~

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

~~Protective work to buildings~~

~~17.—(1) Subject to the following provisions of this article, the undertaker may at its own~~

~~expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.~~

~~(2) Protective works may be carried out—~~

~~(a) at any time before or during the carrying out in the vicinity of the building of any part of~~

~~the authorised project; or~~

~~(b) after the completion of that part of the authorised project in the vicinity of the building at~~

~~any time up to the end of the period of 5 years beginning with the day on which that part~~

~~of the authorised project is first opened for use.~~

~~(3) For the purpose of determining how the functions under this article are to be exercised the~~

~~undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.~~

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

~~(a) enter the building and any land within its curtilage; and~~

~~(b) where the works cannot be carried out reasonably conveniently without entering land~~

~~which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).~~

~~(5) Before exercising—~~

~~(a) a right under paragraph (1) to carry out protective works to a building;~~

~~(b) a right under paragraph (3) to enter a building and land within its curtilage;~~

~~(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or~~

~~(d) a right under paragraph (4)(b) to enter land,~~

~~the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the~~

~~building or land not less than 14 days' notice of its intention to exercise that right and, in a case~~

~~falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.~~

~~(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the~~

~~building or land concerned may, by serving a counter notice within the period of 10 days~~

~~beginning with the day on which the notice was served, require the question whether it is~~

~~necessary or expedient to carry out the protective works or to enter the building or land to be~~

~~referred to arbitration under article 57 (arbitration).~~

~~(7) The undertaker shall compensate the owners and occupiers of any building or land in relation~~

~~to which rights under this article have been exercised for any loss or damage arising to them by~~

~~reason of the exercise of those rights.~~

~~(8) Where—~~

~~(a) protective works are carried out under this article to a building; and~~

~~(b) within the period of 5 years beginning with the day on which the part of the authorised~~

~~project carried out in the vicinity of the building is first opened for use it appears that the~~

~~protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project,~~

~~the undertaker shall compensate the owners and occupiers of the building for any loss or damage~~

~~sustained by them.~~

~~(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation~~

~~under section 10(2) of the 1965 Act (compensation for injurious affection).~~

-68

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

~~(11) In this article “protective works” in relation to a building means—~~

~~(a) underpinning, strengthening and any other works the purpose of which is to prevent~~

~~damage which may be caused to the building by the carrying out, maintenance or use of~~

~~the authorised project; and~~

~~(b) any works the purpose of which is to remedy any damage which has been caused to the~~

~~building by the carrying out, maintenance or use of the authorised project.~~

~~Authority to survey and investigate the land~~

~~18.—(1) The undertaker may for the purposes of this Order enter on any land shown within the~~

~~Order limits or which may be affected by the authorised project and—~~

~~(a) survey or investigate the land;~~

~~(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions~~

~~on the land as the undertaker thinks fit to investigate the nature of the surface layer and~~

~~subsoil and remove soil samples;~~

~~(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and~~

~~(d) place on, leave on and remove from the land apparatus for use in connection with the~~

~~survey and investigation of land and making of trial holes.~~

~~(2) No land may be entered or equipment placed or left on or removed from the land under~~

~~paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the~~

~~land.~~

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

~~(a) shall, if so required, produce written evidence of their authority to do so; and~~

~~(b) may take with them such vehicles and equipment as are necessary to carry out the survey~~

~~or investigation or to make the trial holes.~~

~~(4) No trial holes shall 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 shall not be unreasonably withheld.~~

~~(5) The undertaker shall 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):

Removal of human remains

19.— (1) In this article “the specified land” means [insert description of the land].

(2) Before the undertaker carries out any development or works which will or may disturb any

human remains in the specified land it shall remove those remains from the specified land, or

cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker shall give

notice of the intended removal, describing the specified land and stating the general effect of the

following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in

the area of the authorised project; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

~~69~~

(4) ~~As soon as reasonably practicable~~ after the first publication of a notice under paragraph (3)

the undertaker shall send a copy of the notice to [insert relevant local authority].

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any

person who is a personal representative or relative of any deceased person whose remains are

interred in the specified land may give notice in writing to the undertaker of that person’s intention

to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be

identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally

take place; or

(b) removed to, and cremated in, any crematorium;

and that person shall, as soon as reasonably practicable after such re-interment or cremation,

provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the

personal representative or relative as that person claims to be, or that the remains in question can

be identified, the question shall be determined on the application of either party in a summary

manner by the county court, and the court may make an order specifying who shall remove the

remains and as to the payment of the costs of the application.

(8) The undertaker shall pay the reasonable expenses of removing and re-interring or cremating

~~the remains of any deceased person under this article.~~

~~(9) If—~~

~~(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph~~

~~has been given to the undertaker in respect of any remains in the specified land; or~~

~~(b) such notice is given and no application is made under paragraph (7) within 56 days after~~

~~the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or~~

~~(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains;~~

~~or~~

~~(d) it is determined that the remains to which any such notice relates cannot be identified;~~

~~subject to paragraph (10) the undertaker shall remove the remains and cause them to be re-interred~~

~~in such burial ground or cemetery in which burials may legally take place as the undertaker thinks~~

~~suitable for the purpose and so far as possible remains from individual graves shall be re-interred~~

~~in individual containers which shall be identifiable by a record prepared with reference to the~~

~~original position of burial of the remains that they contain.~~

~~(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the~~

~~personal representative or relative as that person claims to be and that the remains in question can~~

~~be identified, but that person does not remove the remains, the undertaker shall comply with any~~

~~reasonable request that person may make in relation to the removal and re-interment or cremation~~

~~of the remains.~~

~~(11) On the re-interment or cremation of any remains under this article—~~

~~(a) a certificate of reinterment or cremation shall be sent by the undertaker to the Registrar~~

~~General by the undertaker giving the date of reinterment or cremation and identifying the~~

~~place from which the remains were removed and the place in which they were reinterred~~

~~or cremated; and~~

~~(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to [insert relevant local authority]~~

~~mentioned in paragraph (4).~~

~~(12) The removal of the remains of any deceased person under this article shall be carried out in~~

~~accordance with any directions which may be given by the Secretary of State.~~

~~(13) Any jurisdiction or function conferred on the county court by this article may be exercised~~

~~by the district judge of the court.~~

~~70~~

~~(14) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.~~

~~Right to dredge~~

~~20.— (1) The undertaker may, for the purposes of constructing and maintaining the work and of affording access to the work by vessels, from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the river as adjoin or are near to the work and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995) from time to time dredged by them.~~

~~(2) No such materials shall be laid down or deposited—~~

~~(a) in contravention of the provisions of any enactment as respects the disposal of waste; or~~

~~(b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by [insert relevant body].~~

~~(3) [if applicable] The undertaker shall consult with [name of separate conservancy port authority] before exercising the rights conferred on them by this article.~~

~~Tidal works not to be executed without approval of Secretary of State~~

~~21.— (1) Unless its construction has commenced within five years [or such other period as is prescribed or specified in the Order] of the coming into force of this Order, no tidal work shall be~~

~~constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans~~

~~and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before that work is begun.~~

~~(2) Any request for the approval of the Secretary of State under paragraph (1) shall be accompanied by written evidence to demonstrate to the satisfaction of the Secretary of State that~~

~~Schedule L (protective provisions) has been complied with as respects the tidal work for which approval is being requested.~~

~~(3) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—~~

~~(a) the Secretary of State may by notice in writing require the undertaker at their own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is~~

~~served on the undertaker they have failed to take reasonable steps to comply with the~~

~~requirements of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition, and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.~~

~~Abatement of works abandoned or decayed~~

~~22.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.~~

~~(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable~~

~~(a) 1857 c. 81. There are amendments to this Act which are not relevant to this Order. 71~~

~~apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.~~

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

~~Survey of tidal works~~

~~23. If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site on which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker.~~

~~Lights on tidal works etc. during construction~~

~~24. The undertaker shall at or near—~~

~~(a) a tidal work, including any temporary work; or~~

~~(b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 7 (subsidiary works), within the area of seaward construction activity, during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State [and the conservancy authority if applicable or, failing agreement between them, the Secretary of State] may from time to time direct.~~

~~Provision against danger to navigation~~

~~25. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker~~

~~shall as soon as reasonably practicable notify [separate conservancy authority if applicable and]~~

~~Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for~~

~~preventing danger to navigation as Trinity House [and the conservancy authority or, failing~~

~~agreement between them, the conservancy authority] may from time to time direct.~~

~~Permanent lights on tidal works~~

~~26. After the completion of a tidal work the undertaker shall at the outer extremity of it exhibit~~

~~every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the~~

~~prevention of danger to navigation as [the separate conservancy authority if applicable and]~~

~~Trinity House [or, failing agreement between them, the conservancy authority] may from time to~~

~~time direct.~~

~~Rights to lease etc.~~

~~27.—(1) The undertaker may at any time lease or grant for the purposes of the undertaking the~~

~~use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings,~~

~~equipment or other property forming part of the undertaking for such period or periods and on~~

~~such terms and conditions as may be agreed between the undertaker and the persons taking the~~

~~same.~~

~~—72~~

~~(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the~~

~~lessee or grantee any of the functions of the undertaker other than those specified in subparagraphs~~

~~(a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964(a).~~

~~Powers of acquisition~~

~~Compulsory acquisition of land~~

~~28.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project [or to facilitate, or is incidental, to it][or is required as replacement land].~~

~~(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008~~

~~Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be~~

~~discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) Any person who suffers loss by the extinguishment or suspension of any private right of way~~

~~under this article shall be entitled to compensation to be determined, in case of dispute, under Part~~

~~1 of the 1961 Act.~~

~~(4) This article is subject to article 35 (acquisition of land limited to subsoil lying more than 9~~

~~metres beneath surface) and article 38 (temporary use of land for carrying out the authorised project).~~

~~Compulsory acquisition of land—incorporation of the mineral code~~

~~29. [Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(b)(minerals) [is/are]~~

~~incorporated in this Order subject to the modifications that—~~

~~(a) paragraph 8(3) is not incorporated;~~

~~(b) for “the acquiring authority” substitute “the undertaker”;~~

~~(c) [insert additional modifications].~~

~~Time limit for exercise of authority to acquire land compulsorily~~

~~30.—(1) After the end of the period of [5 years] beginning on the day on which this Order is~~

~~made—~~

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

~~(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting~~

~~Declarations) Act 1981 as applied by article 33 (application of the Compulsory Purchase~~

~~(Vesting Declarations) Act 1981)(c).~~

~~(2) The authority conferred by article 38 (temporary use of land for carrying out the authorised~~

~~project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this~~

~~paragraph shall prevent the undertaker remaining in possession of land after the end of that period;~~

~~if the land was entered and possession was taken before the end of that period.~~

~~(a) 1964 c.40. Paragraph 9B was inserted by section 63 of, and paragraph 9 of Schedule 3 to, the Transport and Works Act~~

~~1992 (c.42).~~

~~(b) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.~~

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

~~73~~

~~Compulsory acquisition of rights~~

~~31.— (1) The undertaker may acquire compulsorily the existing rights and create and acquire~~

~~compulsorily the new rights described in the book of reference and shown on the {insert name}~~

~~plan.~~

~~(2) As from the date on which a compulsory acquisition notice is served or the date on which~~

~~any new right is vested in the undertaker, whichever is the later, the land over which any new~~

~~rights is acquired shall be discharged from all rights, trusts and incidents to which it was~~

~~previously subject so far as their continuance would be inconsistent with the exercise of that new~~

~~right.~~

~~(3) Subject to section 8 of the 1965 Act as substituted by article 36 (acquisition of part of certain~~

~~properties), where the undertaker acquires an existing right over land under paragraph (1), the~~

~~undertaker shall not be required to acquire a greater interest in that land.~~

~~(4) Any person who suffers loss as a result of the extinguishment or suspension of any private~~

~~right of way under this article shall be entitled to compensation to be determined, in ease of~~

~~dispute, under Part 1 of the 1961 Act.~~

~~Private rights of way~~

~~32.— (1) Subject to the provisions of this article, all private rights of way over land subject to~~

~~compulsory acquisition under this Order shall be extinguished—~~

~~(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by~~

~~agreement; or~~

~~(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act~~

~~(power of entry);~~

~~whichever is the earliest.~~

~~(2) Subject to the provisions of this article, all private rights of way over land owned by the~~

~~undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.~~

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

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

~~(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 41 (statutory undertakers) applies.~~

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

~~(a) any notice given by the undertaker before—~~

~~(i) the completion of the acquisition of the land;~~

~~(ii) the undertaker's appropriation of it;~~

~~(iii) the undertaker's entry onto it; or~~

~~(iv) the undertaker's taking temporary possession of it;~~

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

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

~~(7) If any such agreement as is referred to in paragraph (6)(b)—~~

~~(a) is made with a person in or to whom the right of way is vested or belongs; and~~

~~(b) is expressed to have effect also for the benefit of those deriving title from or under that~~

~~person;~~

~~it shall be effective in respect of the persons so deriving title, whether the title was derived before~~

~~or after the making of the agreement.~~

~~Application of the Compulsory Purchase (Vesting Declarations) Act 1981~~

~~33.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply as if this~~

~~Order were a compulsory purchase order.~~

~~(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect~~

~~with the following modifications.~~

~~(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—~~

~~“(1) Before making a declaration under section 4 with respect to any land which is subject~~

to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is —

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

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after

“given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted —

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

~~(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or~~

~~(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month..”.~~

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

~~(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and~~

~~(b) subsection (2) shall be omitted.~~

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by

section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act

1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the

compulsory acquisition of land under this Order.

Acquisition of subsoil only

34.— (1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of

the land referred to in article 28(1) (compulsory acquisition of land) as may be required for any

purpose for which that land may be acquired under that provision instead of acquiring the whole

of the land.

~~(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning~~

~~(Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and~~

~~16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2~~

~~of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and~~

~~Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act~~

~~2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56~~

~~of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of,~~

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

~~75~~

~~(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph~~

~~(1), the undertaker shall not be required to acquire an interest in any other part of the land.~~

~~(3) Paragraph (2) shall not prevent article 36 (acquisition of part of certain properties) from~~

~~applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a~~

~~house, building or manufactory.~~

~~Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~

~~35.—(1) This article applies to the land specified in Schedule F (land of which only subsoil~~

~~more than 9 metres beneath surface may be acquired).~~

~~(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 28 (compulsory acquisition of land) so much of, or such rights in, the~~

~~subsoil of the land as may be required for the purposes of the authorised project.~~

~~(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this~~

~~article applies, the undertaker shall not be required to acquire a greater interest in the land or an~~

~~interest in any other part of it.~~

~~(4) References in this article to the subsoil of land are references to the subsoil lying more than 9~~

~~metres beneath the level of the surface of the land; and for this purpose “level of the surface of the~~

~~land” means—~~

~~(a) in the case of any land on which a building is erected, the level of the surface of the~~

~~ground adjoining the building;~~

~~(b) in the case of a watercourse or other water area, the level of the surface of the ground~~

~~nearest to it which is at all times above water level; or~~

~~(c) in any other case, ground surface level.~~

~~Acquisition of part of certain properties~~

~~36.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as~~

~~divided land) (as applied by section 125 of the 2008 Act) where—~~

~~(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in~~

~~respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”);~~

~~and~~

~~(b) a copy of this article is served on the owner with the notice to treat.~~

~~(2) In such a case, the owner may, within the period of 21 days beginning with the day on which~~

~~the notice was served, serve on the undertaker a counter notice objecting to the sale of the land~~

~~subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter notice”).~~

~~(3) If no such counter notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.~~

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

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

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

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

~~without seriously affecting the amenity and convenience of the house, the owner shall be required to sell the land subject to the notice to treat.~~

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

~~—76~~

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

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

~~without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.~~

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

~~(a) the land subject to the notice to treat cannot be taken without material detriment to the~~

~~remainder of the land subject to the counter notice; but~~

~~(b) the material detriment is confined to a part of the land subject to the counter notice,~~

~~the notice to treat shall be deemed to be a notice to treat for the land to which the material~~

~~detriment is confined in addition to the land already subject to the notice, whether or not the~~

~~additional land is land which the undertaker is authorised to acquire compulsorily under this~~

~~Order.~~

~~(8) If the undertaker agrees to take the land subject to the counter notice, or if the tribunal determines that—~~
~~(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter notice or, as the case may be, without material detriment to the remainder of the land subject to the counter notice and without seriously affecting the amenity and convenience of the house; and~~
~~(b) the material detriment is not confined to a part of the land subject to the counter notice,~~
~~the notice to treat shall be deemed to be a notice to treat for the land subject to the counter notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

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

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

~~Rights under or over streets~~

~~37.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air space over, any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air space for those purposes or any other purpose ancillary to the authorised project.~~

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

~~(3) Paragraph (2) shall not apply in relation to—~~
~~(a) any subway or underground building; or~~

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

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

~~77~~

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

~~Temporary use of land for carrying out the authorised project~~

~~38.— (1) The undertaker may, in connection with the carrying out of the authorised project—~~

~~(a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule G (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;~~

~~(b) remove any buildings and vegetation from that land; and~~

~~(c) construct temporary works (including the provision of means of access) and buildings on that land.~~

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

~~(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule G.~~

~~(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.~~

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

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

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

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

~~(a) acquiring new rights over any part of that land under article 31 (compulsory acquisition of rights); or~~

~~(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 34 (acquisition of subsoil only) or in accordance with article 35 (acquisition of land limited to subsoil lying more than 9 metres beneath surface).~~

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

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

~~Temporary use of land for maintaining authorised project~~

~~39.— (1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—~~

~~78~~

~~(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and~~

~~(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.~~

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

~~(a) any house or garden belonging to a house; or~~

~~(b) any building (other than a house) if it is for the time being occupied.~~

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

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

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

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

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

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

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

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

~~(11) In this article "the maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project is first opened for use.~~

~~Special category land~~

~~40.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and [insert name of relevant body] has certified that a scheme for~~

the provision of the replacement land as [common/open space/fuel or field garden allotment] has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in [insert name of relevant body] subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled

“Special Category Land Plan” attached to the land plan, which may be acquired compulsorily

under this Order and for which replacement land is to be provided; and

“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.

Statutory undertakers

41. The undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers shown on the [insert name] plan within the limits of the land to be acquired and described in the book of reference;

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the [insert name] plan and described in the book of reference; and

(c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the [insert name] plan and described in the book of reference.

Apparatus and rights of statutory undertakers in stopped-up streets

42.—(1) Where a street is stopped up under article 11 (stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and

rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not

been made.

(2) Where a street is stopped up under article 11 any statutory utility whose apparatus is under,

in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such

other position as the utility may reasonably determine and have power to place it; or

~~(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).~~

~~(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—~~

~~(a) the execution of the relocation works required in consequence of the stopping up of the street; and~~

~~(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.~~

~~(4) If in the course of the execution of relocation works under paragraph (2)—~~

~~(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in~~

(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 to be necessary, then, if it involves cost in the execution of the relocation works 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.~~

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

~~(4) (5) For the purposes of paragraph sub-paragraph (4)—~~

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

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

apparatus; and

~~(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the~~

(b) consequential provision of a jointing chamber or of a manhole shall 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.

~~-80~~

~~(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4))~~

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

~~(7) Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway~~

~~works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—~~

~~(a) the allowable costs of the relocation works shall be determined in accordance with section~~

~~85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and~~

~~(b) the allowable costs shall be borne by the undertaker and the statutory utility in such~~

~~proportions as may be prescribed by any such regulations.~~

~~(8) In this article—~~

~~“apparatus” has the same meaning as in Part 3 of the 1991 Act;~~

~~“relocation works” means work executed, or apparatus provided, under paragraph (2); and~~

~~“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).~~

~~Recovery of costs of new connections~~

~~43.—(1) Where any apparatus of a public utility undertaker or of a public communications~~

~~provider is removed under article 41 (statutory undertakers) any person who is the owner or~~

~~occupier of premises to which a supply was given from that apparatus shall be entitled to recover~~

~~from the undertaker compensation in respect of expenditure reasonably incurred by that person, in~~

~~consequence of the removal, for the purpose of effecting a connection between the premises and~~

~~any other apparatus from which a supply is given.~~

~~(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a~~

~~sewer is removed under article 41, any person who is —~~

~~(a) the owner or occupier of premises the drains of which communicated with that sewer; or~~

~~(b) the owner of a private sewer which communicated with that sewer, shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably~~

~~incurred by that person, in consequence of the removal, for the purpose of making the drain or~~

~~sewer belonging to that person communicate with any other public sewer or with a private~~

~~sewerage disposal plant.~~

~~(3) This article shall not have effect in relation to apparatus to which article 42~~

~~(apparatus and~~

~~rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.~~

~~(4) In this article —~~

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

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

~~(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.~~

~~-81~~

~~Miscellaneous and general~~

~~Deemed consent under section 34 of the Coast Protection Act 1949~~

~~44. The undertaker is granted deemed consent under section 34 of the Coast Protection Act~~

~~1949(a) to carry out the works described in Schedule H, subject to the requirements set out in that~~

~~Schedule.~~

~~Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~

~~45. The undertaker is granted a deemed licence under Part 2 of the Food and Environment~~

~~Protection Act 1985(b) to carry out the works described in Schedule I, subject to the requirements~~

~~set out in that Schedule.~~

~~Felling or lopping of trees~~

~~46.— (1) The undertaker may fell or lop any tree or shrub near any part of the authorised project,~~

~~or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or~~

~~shrub —~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the~~

~~authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

~~(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person~~

~~for any loss or~~

damage arising from such activity.

~~(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the~~

~~amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

~~Trees subject to tree preservation orders~~

~~47.—(1) The undertaker may fell or lop any tree described in Schedule J and~~

~~identified on the~~

~~[insert name] plan, or cut back its roots if it reasonably believes it to be necessary in order to do so~~

~~to prevent the tree or shrub—~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the~~

~~authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised~~

~~project.~~

~~(2) In carrying out any activity authorised by paragraph (1)—~~

~~(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~

~~(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not~~

~~apply.~~

~~(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant~~

~~tree preservation order.~~

~~(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the~~

~~amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

~~(a) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other~~

~~amendments to the 1949 Act which are not relevant to this Order.~~

~~(b) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the~~

~~Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this~~

~~Order.~~

~~82~~

Railway and navigation undertakings 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 which represents that benefit.

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

PART 5
FOR THE PROTECTION OF DWR CYMRU CYFYNGEDIG

Application

~~40.48.~~—(1) Subject to For the protection of Dwr Cymru Cyfyngedig referred to in this Part 5 of Schedule 11, the following provisions of this article, the undertaker may not under article will, unless otherwise agreed in writing between the undertaker and DCC, have effect.

Interpretation

41. In this Part of this Schedule—

“accessories” has the same meaning as that set out in section 219 of the Water Industry Act 1991(a) (general interpretation) but also includes any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;

“clearance area” means the area of land—

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

(b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is between 300mm and 600mm in diameter; or

(c) within 9 metres either side of the centre line of a rising main;

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

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

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

“WIA 1991” means the Water Industry Act 1991(b)(as amended);

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

(b) 1991 c.56.

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

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

No acquisition or extinguishment except by agreement

42.—(1) Subject to sub-paragraph (2), regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any DCC apparatus or its accessories or override or extinguish any easement or other interest of DCC or acquire any land or other interest of DCC identified in the book of reference or create any new rights over the same otherwise than by agreement with DCC in accordance with the provisions of this Schedule.

(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DCC’s rights to access DCC apparatus or accessories but subject always to each sub-paragraph of paragraphs 46 and 47 of this Part and to the undertaker giving DCC 28 days notice of such interference.

Precedence of the WIA 1991

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

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

(2) The arbitration provisions at article 43, or specified in this Part of Schedule 11 do not apply where DCC uses a warrant of entry in accordance with the provisions of the WIA 1991.

Protection of DCC apparatus

44.—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DCC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 43(1)(k), the undertaker must submit to DCC written notice together with a draft specification.

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

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

(4) Nothing in this paragraph 44 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 44 apply to and in respect of the new draft specification.

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency provided it has complied with paragraph 45 save that the undertaker must comply with sub-paragraphs (1) and (3) above in so far as is reasonably practicable in the circumstances.

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

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

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

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

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

(10) Any affected DCC apparatus which is no longer required by DCC but is not removed 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

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

- (a) the undertaker must procure that it and its contractor(s) and subcontractor(s) are to forthwith suspend or cease the works having due regard to health and safety factors, and discuss and agree with DCC the remedial actions required prior to resuming the works;

- (b) the undertaker and DCC must act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
 - (c) DCC must submit to the undertaker within 3 days following the suspension, a written notice specifying the reasons for suspending the works;
 - (d) in the event that DCC fails to supply the written notice within 3 days of suspension, DCC's instruction to suspend the works will be void and the undertaker will be entitled to recommence the works; and
 - (e) DCC must commence, carry out and complete any remedial works pursuant to sub-paragraph (1), as soon as reasonably practicable and DCC must give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker will be entitled to resume the works.
- (2) DCC is entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 45.
- (3) DCC must use its reasonable endeavours to minimise any costs, expenses, loss, demands and penalties to which this paragraph 45 applies. If requested to do so by the undertaker, DCC must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 45 for claims reasonably incurred by DCC.

46.—(1) In the event that either the undertaker or DCC (for the purpose of this paragraph 46 “the party” or together “the parties”) wishes to take any action which would impact on the ability of the undertaker to carry out the authorised development or DCC to carry out its statutory functions, the parties must use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party’s works. In respect of the reference to ‘work’ and ‘works’ in this sub-paragraph (1), to the extent that this refers to ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 41 does not apply.

(2) Subject to paragraph 47, differences or disputes arising between the undertaker and DCC under this Part of Schedule 11 must, unless otherwise agreed in writing between the undertaker and DCC, be determined by arbitration in accordance with article 43 (arbitration) of the Order.

Emergency Works

47.—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DCC of the proposed emergency works. For the avoidance of doubt, in the event that DCC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification in accordance with this sub paragraph the indemnity in paragraph 48 is to apply.

(2) DCC must at all times be permitted to carry out any emergency works in relation to its DCC apparatus within the Order limits in accordance with Part II, Schedule 6 WIA 1991 (Other rights of entry and related powers).

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

(4) In respect of the reference to ‘work’ and ‘works’ in this paragraph 47, to the extent that is ‘work’ or ‘works’ to be undertaken by DCC, the definition of works in paragraph 41 of this Part does not apply.

Damage to DCC apparatus

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

- (a) the commencement, carrying out, execution or retention of the works or any breach of this Part relating to the performance of the works and must pay compensation for loss, damage or injury caused by the actions or default of the undertaker, its contractors, subcontractors, licencees, agents and invitees relating to the performance of the works; and
 - (b) damage to the environment caused by the undertaker during any works including but not limited to pollution and/or contamination; and
 - (c) any breach of any stipulation or otherwise of any deeds of grant (or any renewal of any of the deeds of grant made on substantially the same terms provided that DCC has supplied the undertaker with a copy of the new document) arising from the works.
- (2) Subject to sub-paragraphs (3), (4), (6) and (7), the undertaker shall bear and pay the costs reasonably incurred by DCC in making good damage to DCC apparatus or restoring an interruption in the supply provided by DCC.
- (3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DCC, its officers, servants, contractors or agents.
- (4) DCC shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker.
- (5) Neither the undertaker, nor any of its officers, employees or agents in any circumstances whatsoever be liable for any indirect or consequential loss.
- (6) Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and DCC in respect of any DCC apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.
- (7) DCC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 48 applies. If requested to do so by the undertaker, DCC must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 48 for claims reasonably incurred by DCC.

PART 6
FOR THE PROTECTION OF ABERGELLI SOLAR LIMITED

Application

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

Interpretation

50. In this Part of this Schedule—

“apparatus” means any cables or other apparatus belonging to or maintained by the solar operator for the purposes of electricity generation and for the export of electricity pursuant to the solar farm permission (including but not limited to all reasonably necessary protective equipment for such electricity generation and export of electricity such as security devices and fencing);

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

“solar farm permission” means full planning permission granted on [XXX] (ref XX);

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

“solar operator” means Abergelli Solar Limited being the operator of the solar farm on the solar farm site which has consent pursuant to the solar farm permission; and

“specified work” means so much of any of the works comprised in the authorised development or works required to facilitate or which are incidental to the authorised development (including, but without limitation, the gas pipeline) which are in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus.

Acquisition of land

51. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any apparatus or extinguish any easement or other interest of the solar operator otherwise than by agreement (such agreement not to be unreasonably withheld).

Access

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

Apparatus in streets subject to temporary prohibition or restriction

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

Specified Works

54.—(1) Not less than 28 days before starting the execution of any specified work in, on or under any land purchased, leased, held, appropriated or used under this Order that are within [X] metres of any apparatus, or will or may affect any apparatus, the undertaker must submit to the solar operator a plan, section and description of the specified works to be executed.

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

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

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

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

Expenses and costs

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

56.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus, or there is any interruption in any service provided, or in the supply of any goods, by the solar operator, the undertaker must—

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

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

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

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

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

Arbitration

57. Any difference or dispute arising between the undertaker and the solar operator under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the solar operator, be determined by arbitration in accordance with article 43 (arbitration).

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

PART 7

FOR THE PROTECTION OF WALES AND WEST UTILITIES LIMITED

Application

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

Interpretation

59. In this Part of this Schedule—

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

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

“functions” includes powers and duties;

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

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

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

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

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

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

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

Acquisition of Land

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

Retained apparatus: Protection: Protected Persons

62.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works that are within [x] metres of any apparatus the undertaker must submit to the protected person in question a plan.

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

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

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

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

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

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

(6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the protection of the apparatus, for securing access to the apparatus, and the protected person shall be entitled to watch and inspect the execution of this works.

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

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

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

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

(10) At all times when carrying out any works authorised under the Order comply with Wales and West Utilities Limited's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of pipelines and associated installation operating above 2 BAR's" and HSE's "HSG47 Avoiding Danger from underground services".

Expenses

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

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

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

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

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

Indemnity

64.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Order, any material damage is caused to any apparatus or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker must—

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the protected person, its officers, servants, contractors or agents; and

(b) any authorised development and/or any other works authorised by this Schedule carried out by the protected person as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 7 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section 3(b) shall be subject to the full terms of this Schedule including this paragraph 64 in respect of such new apparatus.

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

(5) The protected person must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 64 applies. If requested to do so by the undertaker, the protected person shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 64 for claims reasonably incurred by the protected person.

Enactments and agreements

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

Co-operation

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

Access

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

Arbitration

68. Any difference or dispute arising between the undertaker and the protected person under this Schedule will, unless otherwise agreed in writing between the undertaker and the protected person, be determined by arbitration in accordance with article 43 (arbitration).

PROCEDURE FOR DISCHARGE OF REQUIREMENTSApplications made under requirements

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

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

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

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant planning authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

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

Further information

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

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant planning authority must, within fourteen (14) days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement

consultee within five business days of receipt of such a request and in any event within twenty-one (21) days of receipt of the application.

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

(5) Where further information is requested under this paragraph 2 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b), paragraph 1(p4) and paragraph 2.

Appeals

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

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 1(4);
- (c) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

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

- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee (together with the undertaker, these are the “appeal parties”);
- (b) The Secretary of State must appoint a person within twenty (20) business days of receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) The relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty (20) business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) The appeal parties must make any counter-submissions to the appointed person within twenty (20) business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty (30) business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).
- (f) The appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

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

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and any requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the

appointed person within ten (10) business days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c)–2(e).

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

(a) allow or dismiss the appeal, or

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

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

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

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

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

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten (10) years' experience.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Development Management Manual, Section 12 Annex: Award of Costs, or any circular or guidance which may from time to time replace it.

Interpretation of Schedule 12

4. In this Schedule 12—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971; and

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Abergelli Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose as well as to override easements and other rights.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 40 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Swansea Central Library, Civic Centre, Oystermouth Road, Swansea, SA1 3SN.

~~10 (street works) break up or open a street where the street, not being a highway maintainable at~~

~~public expense (within the meaning of the 1980 Act)—~~

~~(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or~~

~~(b) forms part of a level crossing belonging to any such undertakers or to such an authority or~~

~~to any other person;~~

~~except with the consent of the undertakers or authority or, as the case may be, of the person to~~

~~whom the level crossing belongs.~~

~~(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works;~~

~~within the meaning of Part 3 of the 1991 Act.~~

~~(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable~~

~~conditions as may be specified by the person giving it but shall not be unreasonably withheld.~~

~~(4) In this paragraph “navigation authority” means any person who has a duty or power under~~

~~any enactment to work, maintain, conserve, improve or control any canal or other inland~~

~~navigation, navigable river, estuary or harbour.~~

~~Application of landlord and tenant law~~

~~49.—(1) This article applies to—~~

~~(a) any agreement for leasing to any person the whole or any part of the authorised project or~~

~~the right to operate the same; and~~

~~(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,~~

~~so far as any such agreement relates to the terms on which any land which is the subject of a lease~~

~~granted by or under that agreement is to be provided for that person’s use.~~

~~(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants~~

~~shall prejudice the operation of any agreement to which this article applies.~~

~~(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and~~

~~obligations of the parties to any lease granted by or under any such agreement so as to—~~

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

~~Operational land for purposes of the 1990 Act~~

~~50. Development consent granted by this Order shall be treated as specific planning permission~~

~~for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as~~

~~operational land for the purposes of that Act).~~

~~-83~~

~~Defence to proceedings in respect of statutory nuisance~~

~~51.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection~~

~~Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a~~

~~nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so~~

~~as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed;~~

~~under section 82(2) of that Act if—~~

~~(a) the defendant shows that the nuisance—~~

~~(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or~~

~~(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or~~

~~(b) the defendant shows that the nuisance—~~

~~(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25;~~

~~or~~

~~(ii) is a consequence of the use of the authorised project and that it cannot reasonably be~~

~~avoided.~~

~~(2) Section 61(9) (consent for work on construction site to include statement that it does not of~~

~~itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall 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 project.~~

~~Protection of interests~~

~~52. Schedule L to this Order has effect.~~

~~Saving for Trinity House~~

~~53. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.~~

~~Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994~~

~~54.— (1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994(e)~~

~~(general development orders) (“the Habitats Regulations”) shall not apply to any planning~~

~~permission which relates to the works authorised by article 7 (subsidiary works) and which is~~

~~granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order~~

~~(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.~~

~~(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the~~

~~Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.~~

~~(c) 1994/2716 (“the Habitats Regulations”). Relevant amendments were made by SI 2007/1843, SSI 2007/80, and SSI~~

~~2007/349. The Habitats Regulations make provision for the purpose of implementing, for Great Britain, Council Directive~~

~~92/43/EEC on the conservation of natural habitats and of wild flora and fauna (OJ No. L 206, 22.07.92, p.7) as last amended~~

~~by Council Directive 2006/105/EC of 20 November 2006 adapting Directives~~

~~79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania (OJ No. L~~

~~363, 20.12.06, p.368).~~

~~-84~~

~~1995 for the class of development described as permitted development in Part 11 of Schedule 2 to~~

~~that Order.~~

~~(2) Paragraph (1) does not apply if and to the extent that those works—~~

~~(a) do not form part of the plan and project which was subject to an appropriate assessment~~

~~in accordance with regulation 48 of the Habitats Regulations (assessment of implications~~

for European Site) in connection with the making of this Order; and
(b) are not the subject of a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

~~Planning, etc. jurisdiction~~

~~55.—(1) During the period beginning with the date when this Order comes into force and~~

~~beginning on the accretion date, the area within the Order limits shall, for the purposes of the~~

~~Control of Pollution Act 1974(a) and the Town and Country Planning Act 1990(b), be annexed to~~

~~and incorporated with the district of [insert name of relevant planning authority].~~

~~(2) In this article “accretion date” means the date when the works authorised by this Order have~~

~~been completed or, if earlier, the date when the benefits and rights granted by this Order cease to~~

~~have effect pursuant to article 4 (period for completion of work).~~

~~Certification of plans etc~~

~~56.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to~~

~~the decision-maker copies of—~~

~~(a) the book of reference;~~

~~(b) the land plan;~~

~~(c) the rights plan;~~

~~(d) the works plan;~~

~~(e) the sections; and~~

~~(f) any other plans or documents referred to in this Order,~~

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

~~(2) A plan or document so certified shall be admissible in any proceedings as evidence of the~~

~~contents of the document of which it is a copy.~~

~~Arbitration~~

~~57. Any difference under any provision of this Order, unless otherwise provided for, shall 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~~

~~[insert appropriate body].~~

~~Schedule A~~

~~AUTHORISED PROJECT~~

~~Part 1~~

~~AUTHORISED DEVELOPMENT~~

~~[NOTE: This Part should describe as fully as possible the elements of the proposed project~~

~~(including any associated development), which are development for the purposes of section 32 of~~

~~(a) 1974 c.40.~~

~~(b) 1990 c.8.~~

~~-85~~

~~the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]~~

~~Part 2~~

~~ANCILLARY WORKS~~

~~[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which are not be the subject of a separate provision [article] in this Order.]~~

~~Schedule B~~

~~STREETS SUBJECT TO STREET WORKS~~

~~(1)(2)~~

~~Area Street subject to street works~~

~~Schedule C~~

~~STREETS TO BE STOPPED UP~~

~~Part 1~~

~~STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED~~

~~(1)(2)(3)(4)~~

~~Area Street to be stopped~~

~~up~~

~~Extent of stopping up New street to be substituted~~

~~Part 2~~

~~STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED~~

~~(1)(2)(3)~~

~~Area Street to be stopped up Extent of stopping up~~

~~Schedule D~~

~~STREETS TO BE TEMPORARILY STOPPED UP~~

~~(1)(2)(3)~~

~~Area Street to be temporarily stopped up~~

~~Extent of temporary stopping~~

~~up~~

~~Schedule E~~

~~ACCESS TO WORKS~~

~~(1)(2)~~

~~Area Description of access~~

~~-86~~

~~Schedule F~~

~~LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED~~

~~(1)(2)~~

~~Area Number of and shown on land plan~~

~~Schedule G~~

~~LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN~~

~~(1)(2)(3)(4)~~

~~Area Number of land shown on land plan~~

~~Purpose for which~~

~~temporary possession
may be taken~~

~~Relevant part of the
Authorised project~~

~~Schedule H~~

~~DEEMED CONSENT UNDER COAST PROTECTION ACT 1949~~

~~{Insert details of deemed consent}~~

~~Schedule I~~

~~DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION
ACT 1985~~

~~{Insert details of deemed licence}~~

~~Schedule J~~

~~TREES SUBJECT TO TREE PRESERVATION ORDERS~~

~~(1) (2) (3)~~

~~Type of tree Number [reference] of tree
shown on land plan~~

~~Work to be carried out~~

~~Schedule K~~

~~LIMITS OF HARBOUR~~

~~{Insert details of limits of harbour}~~

~~Schedule L~~

~~PROTECTIVE PROVISIONS~~

~~{Insert details of protective provisions}~~

~~-87~~

~~-SCHEDULE 4 Article 2~~

~~Model provisions in respect of requirements~~

~~CONTENTS~~

~~1. Interpretation~~

~~2. Time limits~~

~~3. Stages of authorised development~~

~~4. 6. Detailed design approval~~

~~7. Provision of landscaping~~

~~8. Implementation and maintenance of landscaping~~

~~9. Trees~~

~~10. Highway accesses~~

~~11. Public rights of way~~

~~12. Fencing — special roads~~

~~13. Fencing and other means of enclosure~~

~~14. Surface water drainage~~

~~15. Contaminated land and groundwater~~

~~16. Archaeology~~

~~17. Ecological management plan~~

~~18. 19. Code of construction practice~~

~~20. Design of roads~~

~~21. External lighting~~

~~22. Construction traffic~~

~~23. Control of noise during construction and maintenance~~

~~24. Construction hours~~

~~25. Control of noise during operational phase~~

~~26. Control of odour emissions~~

- ~~27. Control of artificial light emissions~~
- ~~28. Control of dust emissions~~
- ~~29. Control of smoke emissions~~
- ~~30. Control of steam emissions~~
- ~~31. Control of insects~~
- ~~32. Accumulation or deposit~~
- ~~33. Travel plan~~
- ~~34. European protected species~~
- ~~35. Restoration of land used temporarily for construction~~
- ~~36. Requirement for written approval~~
- ~~37. Amendments to approved details~~
- ~~38. Requirement for consent of Civil Aviation Authority and Ministry of Defence~~

~~Interpretation~~

~~1. In this Schedule—~~

~~“the 1990 Act” means the Town and Country Planning Act 1990;~~

~~“the 2008 Act” means the Planning Act 2008;~~

~~–88~~

~~“authorised development” means the development and associated development described in~~

~~Part 1 of Schedule A (authorised project) [and any other development authorised by this~~

~~Order], which is development within the meaning of section 32 of the 2008 Act;~~

~~“the authorised project” means the authorised development and the ancillary works authorised~~

~~by this Order;~~

~~“the code of construction practice” means the code of construction practice agreed by [insert~~

~~relevant body] on [insert date];~~

~~“the environmental document” means the document certified as the environmental document~~

~~by the decision maker for the purposes of this Order;~~

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

~~“the Order limits” means the limits shown on the works plan within which the authorised~~

~~project may be carried out;~~

~~“relevant planning authority” means—~~

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~“stage” means a defined section or part of ~~the authorised development~~, the extent of which is~~

~~shown in a scheme submitted to and approved by the Commission pursuant to requirement 3~~

~~(stages of authorised development).~~

~~Time limits~~

~~2. The authorised development must be begun within [insert number] years of the date of this~~

~~Order.~~

~~Stages of authorised development~~

~~3. No authorised development shall commence until a written scheme setting out all the stages~~

~~of the authorised development has, after consultation with the relevant planning authority and~~

~~highway authority, been submitted to and approved by the Commission.~~

~~Detailed design approval~~

~~4. No [stage of the] authorised development shall commence until [for that stage] written details~~

~~of the following have, after consultation with the relevant planning authority, been submitted to~~

~~and approved by the Commission—~~

~~{or~~

~~5. No [stage of the] authorised development shall commence until details of the layout, scale and~~

~~external appearance of the following elements of the authorised development [within that stage]~~

~~have, after consultation with the relevant planning authority, been submitted to and approved by~~

~~the Commission]~~

~~6. The authorised development must be carried out in accordance with the approved details.~~

~~Provision of landscaping~~

~~7. No [stage of the] authorised development shall until commence a written landscaping scheme~~

~~[for that stage] has, after consultation with the relevant planning authority, been submitted to and~~

~~-89~~

~~approved by the Commission. The landscaping scheme must include details of all proposed hard~~

~~and soft landscaping works, including—~~

~~(a) location, number, species, size and planting density of any proposed planting;~~

~~(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 the~~

~~construction period;~~

~~(i) retained historic landscape features and proposals for restoration, where relevant;~~

~~and~~

~~(j) implementation timetables for all landscaping works.~~

~~Implementation and maintenance of landscaping~~

~~8.—(1) All landscaping works must be carried out in accordance with the landscaping scheme~~

~~approved under requirement 7 and to a reasonable standard in accordance with the relevant~~

~~recommendations of appropriate British Standards or other recognised codes of good practice.~~

~~(2) The landscaping works must be carried out in accordance with implementation timetables~~

~~approved under requirement 6.~~

~~(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of~~

~~five years after planting, is removed, dies or becomes, in the opinion of the~~

~~Commission, 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 Commission.~~

~~Trees~~

~~9.—(1) No [stage of the] authorised development shall commence until written details of any~~

~~proposed tree planting and the proposed times of planting have, after consultation with the~~

~~relevant planning authority, been approved in writing by the Commission; and all tree planting~~

~~shall be carried out in accordance with those details and at those times.~~

~~(2) If within a period of [two years] beginning with the date of the planting of any tree that tree,~~

~~or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, [or becomes,~~

~~in the opinion of the Commission, seriously damaged or defective,] another tree of the same~~

~~species and size as that originally planted shall be planted at the same place, unless the~~

~~Commission gives its written consent to a variation.~~

~~Highway accesses~~

~~10.—(1) No [stage of the] authorised development shall commence until [for that stage,] written~~

~~details of the siting, design and layout of any new permanent or temporary means of access to a~~

~~highway to be used by vehicular traffic, or any alteration to an existing means of access to a~~

~~highway used by vehicular traffic, has, after consultation with the relevant planning authority and~~

~~highway authority, been submitted to and approved by the Commission.~~

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

~~(3) No [stage of the] authorised development shall be begun until [for that stage,] a written~~

~~Access Management Scheme has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(4) The Access Management Scheme must be carried out in accordance with the approved details.~~

~~-90~~

~~Public rights of way~~

~~11.— (1) No [stage of the] authorised development shall commence that would affect [insert details of relevant right of way] until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(2) The alternative [insert details of relevant right of way] shall be implemented in accordance with the approved plan and specification.~~

~~Fencing—special roads~~

~~12.— (1) No [stage of the] authorised development shall commence until written details of the design and construction of any boundary fencing for special roads have, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(2) The authorised development shall be carried out in accordance with the approved design and construction.~~

~~(3) “Special road” has the same meaning as in section 329 of the Highways Act 1980.~~

~~Fencing and other means of enclosure~~

~~13.— (1) No [stage of the] authorised development shall commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure [for that stage] have, after consultation with the relevant planning authority, been submitted to and approved by the Commission.~~

~~(2) The [insert description], and any construction sites, must remain securely fenced at all times during construction of the authorised development.~~

~~(3) Any temporary fencing must be removed on completion of the authorised development.~~

~~(4) Any approved permanent fencing of the new [insert description] must be completed before the [insert description] is brought into use.~~

~~Surface water drainage~~

~~14.— (1) No [stage of the] authorised development shall commence until [for that stage,] written~~

~~details of the surface and foul water drainage system (including means of pollution control) have, after consultation with the relevant planning authority and the sewerage and drainage authority, been submitted to and approved by the Commission.~~

~~(2) The surface and foul water drainage system must be constructed in accordance with the approved details.~~

~~Contaminated land and groundwater~~

~~15.—(1) No [stage of the] authorised development shall commence until a written scheme~~

~~[applicable to that stage,] to deal with the contamination of any land, including groundwater,~~

~~within the Order limits which is likely to cause significant harm to persons or pollution of~~

~~controlled waters or the environment has, after consultation with the relevant planning authority~~

~~and the Environment Agency, been submitted to and approved by the Commission.~~

~~(2) The scheme shall include an investigation and assessment report, prepared by a specialist~~

~~consultant approved by the relevant planning authority, to identify the extent of any contamination~~

~~and the remedial measures to be taken to render the land fit for its intended purpose, together with~~

~~a management plan which sets out long term measures with respect to any contaminants~~

~~remaining on the site.~~

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

~~94~~

~~Archaeology~~

~~16.—(1) No [stage of the] authorised development shall commence until [for that stage,] a~~

~~written scheme for the investigation of areas of archaeological interest [as identified in section [~~

~~]of the environmental document] has, after consultation with the relevant planning authority, been~~

~~submitted to and approved by the Commission.~~

~~(2) The scheme shall identify areas where field work and/or a watching brief are required, and~~

~~the measures to be taken to protect, record or preserve any significant archaeological remains that~~

~~may be found.~~

~~(3) Any archaeological works or watching brief carried out under the scheme must be by a~~

~~suitably qualified person or body approved by the Commission.~~

~~(4) Any archaeological works or watching brief must be carried out in accordance with the~~

~~approved scheme.~~

~~Ecological management plan~~

~~17.—(1) No [stage of the] authorised development shall commence until a written ecological management plan [for that stage] reflecting the survey results and ecological mitigation and enhancement measures included in the environmental document, after consultation with the relevant planning authority, shall be submitted to and approved by the Commission.~~

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

~~Code of construction practice~~

~~18. Construction works shall be carried out in accordance with the agreed code of construction practice, unless otherwise agreed by the Commission, after consultation with relevant planning authority.~~

~~{or~~

~~19.—(1) No [stage of the] authorised development shall commence until a code of construction practice shall, after consultation with the relevant planning authority, be submitted to and approved by the Commission.~~

~~(2) All construction works shall be undertaken in accordance with the approved code, unless otherwise agreed by the Commission.]~~

~~[Note: The code should specify measures designed to minimise the impacts of construction works, such as means of minimising pollution from dust, noise, vibration and lighting, wheel eleansing facilities, routes for construction traffic, working hours etc. To the extent that it does not, or does not do so adequately, separate conditions are likely to be required, some of which are indicated below].~~

~~Design of roads~~

~~20.—(1) No [stage of the] authorised development consisting of the construction or alteration of a street which is a trunk road or including any traffic management and control measures shall commence until written details of the design of the street shall, after consultation with the~~

~~Highways Agency, be submitted to and approved by the Commission.~~

~~(2) The [authorised development] construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved design.~~

~~External lighting~~

~~21. No [stage of the] authorised development, shall commence until written details of any~~

~~external lighting to be installed at any of the construction sites [within that stage], including measures to prevent light spillage, shall, after consultation with the relevant planning authority and~~

~~92~~

~~the highway authority, be submitted to and approved by the Commission; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period.~~

~~Construction traffic~~

~~22.—(1) No [stage of the] authorised development shall commence until written details of the~~

~~preferred route to be used by construction traffic shall, after consultation with the relevant~~

~~planning authority and the highway authority, be submitted to and approved by the Commission.~~

~~(2) Notices shall be erected and maintained throughout the period of construction at every~~

~~construction site exit, indicating to drivers the route agreed by the Commission for traffic entering and leaving the site.~~

~~Control of noise during construction and maintenance~~

~~23.—(1) No [stage of the] authorised development shall commence until, after consultation with~~

~~the relevant planning authority, a written scheme for noise management during construction and~~

~~maintenance [of that stage] has been submitted to and approved by the Commission.~~

~~(2) The scheme shall set out the particulars of—~~

~~(a) the works, and the method by which they are to be carried out;~~

~~(b) the noise attenuation measures to be taken to minimise noise resulting from the works;~~

~~including any noise limits; and~~

~~(c) a scheme for monitoring the noise during the works to ensure compliance with the noise~~

~~limits and the effectiveness of the attenuation measures.~~

~~(3) The approved noise management scheme must be implemented before and maintained~~

~~during construction and maintenance of the [relevant stage of the] authorised development.~~

~~(4) The construction and maintenance works must be undertaken in accordance with the~~

~~approved noise management scheme.~~

~~Construction hours~~

~~24.—(1) Construction work shall not take place other than between [0800 and 1800 hours on~~

~~weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays], unless otherwise~~

~~agreed by the Commission.~~

~~(2) Nothing in paragraph (1) precludes a start up period from [0730 to 0800] and a shut down~~

~~period from [1800 to 1830] on weekdays (excluding public holidays).~~

~~Control of noise during operational phase~~

~~25.— (1) No authorised development shall commence operation until, after consultation with the~~

~~relevant planning authority, a written scheme for noise management including monitoring and~~

~~attenuation for the use of the authorised project has been submitted to and approved by the~~

~~Commission.~~

~~(2) The noise management scheme must be implemented as approved and maintained for the~~

~~duration of use of the authorised project.~~

~~Control of odour emissions~~

~~26.— (1) No [stage of the] authorised development shall commence until, after consultation with~~

~~the relevant planning authority, a written scheme for the management and mitigation of odour~~

~~emissions has been submitted to and approved by the Commission.~~

~~(2) The approved scheme for the management and mitigation of odour emissions must be~~

~~implemented before and maintained during the construction, operation and decommissioning of~~

~~the [relevant stage of the] authorised development.~~

~~93~~

~~Control of artificial light emissions~~

~~27.— (1) No [stage of the] authorised development shall commence until, after consultation with~~

~~the relevant planning authority, a written scheme for the management and mitigation of artificial~~

~~light emissions has been submitted to and approved by the Commission.~~

~~(2) The approved scheme for the management and mitigation of artificial light emissions must~~

~~be implemented before and maintained during the construction, operation and decommissioning of~~

~~the [relevant stage of the] authorised development.~~

~~Control of dust emissions~~

~~28.— (1) No [stage of the] authorised development shall commence until, after consultation with~~

~~the relevant planning authority, a written scheme for the management and mitigation of dust~~

~~emissions has been submitted to and approved by the Commission.~~

~~(2) The approved scheme for the management and mitigation of dust emissions must be~~

~~implemented before and maintained during the construction, operation and decommissioning of~~

~~the [relevant stage of the] authorised development~~

~~Control of smoke emissions~~

~~29.— (1) No [stage of the] authorised development shall commence until, after consultation with~~

~~the relevant planning authority, a written scheme for the management and mitigation of smoke~~

~~emissions has been submitted to and approved by the Commission.~~

~~(2) The approved scheme for the management and mitigation of smoke emissions must be~~

~~implemented before and maintained during the construction, operation and decommissioning of~~

~~the [relevant stage of the] authorised development.~~

~~Control of steam emissions~~

~~30.— (1) No [stage of the] authorised development shall commence until, after consultation with~~

~~the relevant planning authority, a written scheme for the management and mitigation of steam~~

~~emissions has been submitted to and approved by the Commission.~~

~~(2) The approved scheme for the management and mitigation of steam emissions must be~~

~~implemented before and maintained during the construction, operation and decommissioning of~~

~~the [relevant stage of the] authorised development.~~

~~Control of insects~~

~~31.— (1) No [stage of the] authorised development shall commence until, after consultation with~~

~~the relevant planning authority, a written scheme to ensure the prevention of infestation or~~

~~emanation of insects from the authorised development has been submitted to and approved by the~~

~~Commission.~~

~~(2) The approved scheme for the prevention of infestation or emanation of insects must be~~

~~implemented before and maintained during the construction, operation and decommissioning of~~

~~the [relevant stage of the] authorised development.~~

~~(3) For the purposes of this requirement, “insects” excludes insects that are wild animals~~

~~included in Schedule 5 to the Wildlife and Countryside Act 1981(a) (animals which are protected),~~

~~unless they are included in respect of section 9(5) of that Act only.~~

~~(a) 1981 c.69. Relevant amendments were made by SI 1988/288, 1989/906, 1992/2350, 1998/878, 2007/1843, 2008/2172, SSI~~

~~2007/80. There are other amendments not relevant to this Order.~~

~~94~~

~~Accumulations and deposits~~

~~32.— (1) No [stage of the] authorised development shall commence until, after consultation with~~

~~the relevant planning authority, a written scheme for the management of any accumulations [or]~~

~~and deposits whose effects may be harmful or visible or otherwise noticeable from outside the~~

~~Order limits has been submitted to and approved by the Commission.~~

~~(2) The approved scheme for the management of accumulations and deposits must be~~

~~implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

~~Travel plan~~

~~33.—(1) No [stage of the] of the authorised development shall be begun until, after consultation with the relevant planning authority and the highway authority, a travel plan [for the contractor's workforce], which must include details of the expected means of travel to and from [the authorised [project]] [the construction site] and any parking to be provided, has been submitted to and approved by the Commission.~~

~~(2) No part of the authorised project shall be brought into use until, after consultation with the relevant planning authority and the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised project and any parking to be provided, has been submitted to and approved by the Commission.~~

~~(3) The plan approved under paragraph (1) must be implemented during the construction of the authorised development and the plan approved under paragraph (2) must be implemented [within one month of the authorised project being brought into use] and shall continue to be implemented for as long as the authorised project is used.~~

~~European protected species~~

~~34.—(1) No [stage of the] authorised development shall commence until [further] survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by the authorised development or in any of the trees to be lopped or felled or buildings to be demolished during [that stage of] **the authorised development.**~~

~~(2) Where a European protected species is shown to be present, no authorised development [of that stage] shall be begun until, after consultation with the relevant planning authority, Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures has been submitted to and approved by the Commission; and the authorised development shall be carried out in accordance with the approved scheme.~~

~~(3) “European protected species” has the same meaning as in regulations 38 and 42 of the Conservation (Natural Habitats, &c.) Regulations 1994(a).
Restoration of land used temporarily for construction~~

~~35. Any land within the Order limits which is used temporarily for construction must be reinstated to its former condition, or such condition as the Commission may approve, within [six] months of completion of authorised development.~~

~~Requirement for written approval~~

~~36. Where under any of the above requirements the approval or agreement of the Commission or another person is required, that approval or agreement must be given in writing.~~

~~(a) S.I. 1994/2716.~~

~~95~~

~~Amendments to approved details~~

~~37. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the Commission, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the Commission.~~

~~Requirement for consent of Civil Aviation Authority and Ministry of Defence~~

~~38. No [stage of the] authorised development shall commence until [for that stage], after consultation with the Civil Aviation Authority and the Ministry of Defence, written details for the operation of the authorised project [and its effect on radar] have been submitted to and agreed by the Commission.~~

~~[Note: This requirement is only relevant in the context of authorised development that involves a wind farm.]~~

~~EXPLANATORY NOTE~~

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

~~The Planning Act 2008 (“the 2008 Act”) established the Infrastructure Planning Commission (“the Commission”) and provides for the granting of development consent for certain types of nationally significant infrastructure project. Development consent is granted in the form of an Order made by the Commission or the Secretary of State.~~

~~This Order prescribes model provisions for inclusion in the draft Order, which the Infrastructure~~

~~Planning (Applications and Procedure) Regulations 2009 (S.I. 2009/2264) require to accompany~~

~~an application for an order granting development consent. These model provisions may also be~~

~~included in orders made by the Commission under section 114 of the 2008 Act, which grant~~

~~development consent for nationally significant infrastructure projects. The Commission must have~~

regard to the prescribed model provisions when making an order granting development consent but is not compelled to use them: the Commission may omit them entirely from orders if the model provisions are not appropriate or may adapt them to meet specific requirements.

Schedule 1 sets out general model provisions, which may be included in orders relating to all nationally significant infrastructure projects. These model provisions include an interpretation provision, which sets out general definitions, provisions in respect of street works, stopping up of streets, agreements with street authorities, access to works, the compulsory purchase of land and rights over the land or lesser interests in land and the extinguishment or suspension of rights over land.

Schedule 2 sets out model provisions relevant to orders granting development consent for railways. These include provisions in respect of the incorporation of the Railways Clauses Consolidation Act 1845 (c.20), level crossings and the operation and use of railways.

Schedule 3 sets out model provisions relevant to orders granting development consent for harbours. These include an interpretation provision, which sets out definitions relevant to harbours, provisions in respect of the incorporation of the Harbours, Docks and Piers Clauses Act 1847 (c.27), the limits of the harbour, tidal works and the right to dredge.

Schedule 4 sets out model provisions in respect of the requirements which can be included in orders granting development consent under section 120 of the 2008 Act.

An Impact Assessment has not been prepared for this Order as there is no additional impact on business, charities or the public sector beyond that examined in the Impact Assessment that accompanied the Planning Bill when it was introduced in Parliament on 27th November 2007. That Impact Assessment can be found on the Communities and Local Government website (<http://www.communities.gov.uk>).

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E4829 9/2009 194829T 19585
S.I. 2009 No. 2265 The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009