

## SCHEDULE 1

Article 2(1)

### AUTHORISED DEVELOPMENT

In the County Borough of Neath Port Talbot—

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

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

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

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

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

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

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

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

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

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

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

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

## SCHEDULE 2

Article 3(3)

### REQUIREMENTS

#### Interpretation

1.—(1) In this Schedule—

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

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

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

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

### Time limits

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

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

### Stages of authorised development

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

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

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

### Detailed design

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

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

**Table A**

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

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

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

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

**Table B**

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

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

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

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

(4) No stage of the authorised development may be commenced until written details of the following for that stage have been submitted to and approved by the relevant planning authority—

- (a) the layout, design, external appearance, dimensions and floor levels of all permanent buildings and structures;
- (b) the colour, materials and surface finishes of all permanent buildings and structures; and
- (c) the durability of all cladding materials.

(5) The details to be submitted for approval under sub-paragraph (4) must—

- (a) be in accordance with the design and access statement and the design principles document; and
- (b) include appropriately scaled plans and sectional drawings.

(6) The authorised development must be carried out in accordance with the approved plans and any other approvals given by the relevant planning authority pursuant to this Requirement.

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

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

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

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

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

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

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

### **Provision of landscaping**

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

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

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;

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- (d) hard surfacing materials;
  - (e) vehicular and pedestrian access, parking and circulation areas;
  - (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
  - (g) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
  - (h) details of existing trees to be retained, with measures for their protection during construction;
  - (i) retained historic landscape features and proposals for restoration, where relevant; and
  - (j) implementation timetables for all landscaping works.
- (3) All landscaping works must be carried out in accordance with—
- (a) the approved landscaping scheme and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice; and
  - (b) any implementation timetables approved under sub-paragraph (1).
- (4) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

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

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

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

#### **Archaeology**

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

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

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

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

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



### **Habitat management plan**

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

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

### **Code of construction practice**

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

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

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

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

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

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

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

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

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

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

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

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

### **External lighting**

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

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

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

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

### **Construction hours**

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

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

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

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

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

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

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

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

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

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

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

### **Aviation safety**

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

### **Air quality monitoring**

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

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

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

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

### **Contaminated land and groundwater**

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

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

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

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

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

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

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

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

(7) In this Requirement—

“controlled waters” has the meaning given in Part 3 of the Water Resources Act 1991(1);

“guidance document” means Land Contamination: A Guide for Developers (Welsh Local Government Association and the Environment Agency Wales, 2006(2)).

### **Construction compound**

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

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

## SCHEDULE 3

Article 12(3)

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

#### **Compensation enactments modified**

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

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

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

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

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

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(1) See section 104(1).

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

(3) 1973 c.26.

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

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

### **1965 Act modified**

**3.—**(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land must be read (according to the requirements of the particular context) as referring to, or as including, references to—

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

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

**4.** Omit section 7 of the 1965 Act (measure of compensation in case of severance) and substitute the following section—

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

**5.** Omit section 8 of the 1965 Act (other provisions as to divided land) and substitute the following section—

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

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

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

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

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

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

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

- (a) section 9(4) (refusal to convey, failure to make title, etc.);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of that Act(4) are modified correspondingly.

8. Section 20 of the 1965 Act(5) (tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

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

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

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

## SCHEDULE 4

Article 21

### PROTECTIVE PROVISIONS

#### PART 1

##### PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED, ETC.

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

2. In this Part—

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

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

“network licence” means the network licence, as amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers in section 8 of the Railways Act 1993(6);

“Network Rail” means—

- (a) Network Rail Infrastructure Limited(7) (company number 2904587); and
- (b) any associated company of Network Rail Infrastructure Limited that holds property for railway purposes,

and for the purpose of paragraph (b) “associated company” means any company that is (within the meaning of section 1159 of the Companies Act 2006(8))—

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

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

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993(9)) or station lease;

“railway property” means—

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

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(6) 1993 c.43. Section 8 was amended by paragraph 4 of Schedule 17 and Part 4 of Schedule 31 to the Transport Act 2000 (c.38), paragraphs 3 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c.20), paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to the Railways Act 2005 (c.14) and Part 1 of Schedule 1 to the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682).

(7) The registered office of Network Rail Infrastructure Limited is 1 Eversholt Street, London NW1 2DN.

(8) 2006 c.46.

(9) “Access agreement” is defined in section 83. The definition was amended by section 230 of the Transport Act 2000.



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

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

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

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

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

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

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

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

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic code communications operators: preliminary notices) of the 1990 Act<sup>(10)</sup> or article 18 in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

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

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

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

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

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<sup>(10)</sup> Section 272 was amended by paragraph 103 of Schedule 17 to the Communications Act 2003 (c.21).



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

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

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

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

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

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

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

(3) Nothing in this Part imposes—

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

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7. The undertaker must—

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

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

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

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

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

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

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

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

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

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

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

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

**11.—(1)** In this paragraph—

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

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

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

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

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

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

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

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

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

(7) In the event of EMI having occurred—

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

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

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

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

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

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

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

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

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

**15.—(1)** The undertaker must—

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

- (i) by reason of the construction or maintenance of a specified work or the failure of such a work; or
  - (ii) by reason of any act or omission of the undertaker or of any person in its employ, its contractors or others whilst engaged on a specified work; and
- (b) indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.
- (2) The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer does not (if it was done without negligence on the part of Network Rail or of any person in its employ, its contractors or agents) excuse the undertaker from any liability under sub-paragraph (1).
- (3) Network Rail must give the undertaker reasonable notice of any such claim or demand, and no settlement or compromise of such a claim or demand may be made without the prior consent of the undertaker.
- (4) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.
- (5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (4) that relates to the relevant costs of that train operator.
- (6) The obligation under sub-paragraph (4) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (5).
- (7) In this paragraph—
- “relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1);
  - “train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.
- 16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (including any claim relating to those relevant costs).
- 17.** In the assessment of any sums payable to Network Rail under this Part, there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.
- 18.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—
- (a) any railway property shown on the works and land plans and described in the book of reference;
  - (b) any lands, works or other property held in connection with any such railway property; and

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

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

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

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

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

## PART 2

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

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

**2.** In this Part—

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

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

“apparatus” means electrical plant or electric line (in both cases, as defined in the Electricity Act 1989(11)), belonging to or maintained by WPD;

“associated company” means any company that is—

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

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

“functions” includes powers and duties;

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

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

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



“WPD” means Western Power Distribution (South Wales) plc<sup>(12)</sup> (company number 02366985).

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

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

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

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

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

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

(b) any right of WPD to maintain that apparatus in that land must not be extinguished,

until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of WPD.

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

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

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 25 (arbitration), and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part.

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

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

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<sup>(12)</sup> The registered office of Western Power Distribution (South Wales) plc is Avonbank, Feeder Road, Bristol BS2 0TB.

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

(4) If WPD, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 5 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph 5(2) of that paragraph.

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

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

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

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

(3) If in accordance with this Part—

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

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

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

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

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



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

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

## PART 3

### PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

#### Part to have effect unless otherwise agreed

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

#### Interpretation

2. In this Part—

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

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

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

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

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

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

“functions” includes powers and duties;

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

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

“National Grid” means National Grid Electricity Transmission plc(13) (company number 2366977);

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

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

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

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### **Application**

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

### **Acquisition of land**

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

(2) Where there is any inconsistency or duplication between the provisions of this Part relating to the relocation or removal of apparatus (including the payment of costs and expenses relating to such relocation or removal) and the provisions of any existing easement, right, agreement or licence granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus, the provisions of this Part prevail.

### **Removal of apparatus**

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

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

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

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

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

(b) subsequently for the maintenance of that apparatus.

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

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation

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

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

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

(2) If the facilities and rights to be afforded by the undertaker under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject—

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

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

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

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

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

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

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

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- (g) written details of the operations and maintenance regime for the cable, including frequency and method of access;
  - (h) assessment of earth rise potential, if reasonably required by National Grid’s engineers;
  - (i) evidence that trench-bearing capacity will be designed to 26 tonnes to take the weight of overhead line construction traffic.
- (4) The undertaker must not commence any works to which sub-paragraph (1) or (3) applies until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraph (1)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
  - (b) must not be unreasonably withheld.
- (6) In relation to any works to which sub-paragraph (1) or (3) applies, National Grid may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraph (1) or (3) must be executed only in accordance with the plan submitted, as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable conditions, modifications and requirements as may be made in accordance with sub-paragraph (5), (6), (8) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and National Grid is entitled to watch and inspect the execution of the works.
- (8) Where National Grid require any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature)—
- (a) the protective works must be carried out to the undertaker’s satisfaction before the commencement of any authorised development (or any relevant part of it); and
  - (b) National Grid must give at least 56 days’ notice of the protective works from the date of submission of a plan in accordance with sub-paragraph (1) (except in an emergency).
- (9) If National Grid, in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).
- (10) Nothing in this paragraph prevents the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and this having been done, the provisions of this paragraph apply to and in respect of the new plan.
- (11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act(14); but in that case the undertaker must—
- (a) give to National Grid notice as soon as is reasonably practicable and a plan of the works;
  - (b) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
  - (c) comply with sub-paragraph (12).
- (12) The undertaker must at all times when carrying out any works authorised by this Order comply with—

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

- (a) National Grid’s policy Development near overhead lines(15);
- (b) the Energy Networks Association’s Technical Specification 43-8 Overhead Line Clearances(16); and
- (c) the Health and Safety Executive’s guidance note GS6 Avoiding Danger from Overhead Power Lines(17).

## Expenses

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

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

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

(3) If in accordance with this Part—

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

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

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

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

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

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

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

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

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

### **Indemnity**

9.—(1) Subject to sub-paragraphs (2) and (3), if, by reason or in consequence of—

- (a) the construction of any works authorised by this Part;
- (b) the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker; or
- (c) any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of those works),

any material damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker must—

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

by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as mentioned.

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

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



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

### **Insurance**

**10.**—(1) The undertaker must not—

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

unless National Grid—

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

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

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

### **Enactments and agreements**

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

### **Co-operation**

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

### **Access**

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

### **Arbitration**

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

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## PART 4

### PROTECTION OF DŴR CYMRU CYFYNGEDIG

#### Part to have effect unless otherwise agreed

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

#### Interpretation

2. In this Part—

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

“accessories”—

- (a) has the same meaning as in section 219 of the Water Industry Act 1991<sup>(18)</sup>; and
- (b) includes any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and that is part of a structure designed to receive rainwater or surface water except a public sewer or a natural watercourse;

“clearance area” means the area of land—

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

“DCC” means Dŵr Cymru Cyfyngedig<sup>(19)</sup> (company number 2366777) or its properly authorised agents or sub-contractors;

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

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

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

“functions” has the same meaning as in section 219 of the Water Industry Act 1991 and includes powers and duties;

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

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<sup>(18)</sup> The definition of “accessories” was amended by paragraph 110 of Schedule 17 to the Communications Act 2003.

<sup>(19)</sup> The registered office of Dŵr Cymru Cyfyngedig is Pentwyn Road, Nelson, Treharris, Mid Glamorgan CF46 6LY.



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

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

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

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

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

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

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

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

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

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

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

### **Protection of DCC apparatus**

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

- (a) are within the clearance area; or
- (b) will, or could reasonably foreseeably affect, any DCC apparatus, the removal or alteration of which has not been required by the undertaker under section 185 of the Water Industry Act 1991<sup>(20)</sup>,

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

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

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

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

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

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

### **Suspension of works**

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

- (a) any DCC apparatus; or

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

### **Co-operation**

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

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

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

### **Emergency works**

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

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

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

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

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## **Insurance**

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

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

## **Indemnity**

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

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

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

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

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

(5) DCC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity in sub-paragraph (1) applies and, if requested to do so by the undertaker, DCC must provide an explanation of how the claim has been minimised.

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

## **Arbitration**

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

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

## SCHEDULE 5

Article 24(2)

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

#### Interpretation

**1.** In this Schedule—

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

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

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

#### Applications made under Requirements

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

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

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

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

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

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

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

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

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

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

#### Further information

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

**(2)** If the relevant planning authority considers that further information is necessary, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in

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writing specifying the further information required and (if applicable) to which part of the application it relates.

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

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

## Appeals

4.—(1) The undertaker may appeal if—

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

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination or, where no determination has been made, end of the decision period set out in paragraph 2;
- (b) the undertaker must—
  - (i) submit a copy of the application submitted to the relevant planning authority and any supporting documentation that the undertaker wishes to provide (together, the “appeal documentation”) to the Secretary of State; and
  - (ii) provide on the same day copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must—
  - (i) appoint a person to determine the appeal (the “appointed person”), who must be a qualified town planner with at least 10 years’ experience (and may but need not be a person appointed under paragraph 1 of Schedule 6 to the 1990 Act<sup>(21)</sup>); and
  - (ii) notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person’s attention must be sent;
- (d) the relevant planning authority and any requirement consultee—

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

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

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(15) In considering whether to give a direction under sub-paragraph (14) and the terms on which to give it, the appointed person must have regard to Welsh Government Circular NAFWC 07/2003 Planning (and Analogous) Appeals and Call-in Procedures(22) or any circular or guidance which may from time to time replace it.

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