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STATUTORY INSTRUMENTS

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**2019 No. 1268**

**The Abergelli Power Gas Fired Generating Station Order 2019**

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the Abergelli Power Gas Fired Generating Station Order 2019 and comes into force on 10th October 2019.

**Commencement Information**

**II** Art. 1 in force at 10.10.2019, see [art. 1](#)

**Interpretation**

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

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- (1) [1961 c.33](#). Section 1 was amended by paragraphs 37(a) and (b) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; sections 2 and 3 were repealed by paragraph 38 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 4 was amended by paragraphs 39(a), (b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307. The application of section 5A is modified by paragraph 7 of Schedule 8 to this Order. There are other amendments to the 1961 Act which are not relevant to this Order.
- (2) [1965 c.56](#). Section 1 was amended by part 1 of Schedule 6 and paragraph 14(2) of Schedule 4 to the Acquisition of Land Act 1981, section 4 of and paragraph 13(1)(a) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 ([c.11](#)), and paragraph 1 of Schedule 10 to the Courts Act 2003, ([c.39](#)); sections 2, 7, 9, 14, 21, 22, 24, 26, 28 and 30, paragraph 2 of Schedule 2 and paragraphs 2(3) and 7(2) of Schedule 4 were amended by section 9(3) and paragraph 5 of Schedule 3 to the Gas Act 1986 ([c.44](#)), section 245(4) of the Town and Country Planning Act 1990 ([c.8](#)), section 151(5) of and paragraph 2(1) of Schedule 18 to the Water Act 1989 ([c.15](#)), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 ([c.57](#)), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 ([c.66](#)), section 30(1) of the Acquisition of Land Act 1981 ([c.67](#)) and section 129 of the Local Government Act 1972 ([c.70](#)), sections 39 and 40 and paragraphs 11(1) to Schedule 5 Part III and paragraph 1 to Schedule 4 of the Forestry Act 1967 ([c.10](#)), section 49(7)(i) of the Agriculture Act 1967 ([c.22](#)), section 15 of the Greater London Council (General Powers) Act 1967 ([c.xx](#)), and section 60(1) of the Post Office Act 1969 ([c.48](#)), sections 120(3), 124(2) and 273(1) of the Local Government Act 1972 ([c.70](#)), article 4 of [S.I. 1978/829](#), article 3 of [S.I. 1978/1125](#) and Part I of Schedule 6 to the New Towns Act 1981 ([c.64](#)), with section 129 words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 ([c.62](#)); sections 2, 7, 9, 14, 21, 22, 26, 28 and 32 were amended by sections 120(3), 124(2), and 273(1) of the Local Government Act 1972 ([c.70](#)), article 4 of [S.I. 1978/829](#), article 3 of [S.I. 1978/1125](#), Schedule 6 Part I of the New Towns Act 1981 ([c.64](#)), sections 6, 37(4)(5), 38, and paragraphs 2(2) and 15(9) of Schedule 2 and paragraphs 3(1), 5(1) and 8 of Schedule 5 to the Channel Tunnel Act 1987 ([c.53](#)), sections 2(2), and paragraph 1 of Schedule 2 Part II and paragraph 1(8) of Schedule 3 to the Dartford–Thurrock Crossing Act 1988 ([c.20](#)), section 10(1) and paragraph 6 of Schedule 3 Part I to the Electricity Act 1989 ([c.29](#)), sections 151(5), 151(6), 155(3) to (7) of and paragraphs 2(2)(3) to (8) of Schedule 18 and paragraphs 6(1)(a)(c) of Schedule 20 to the Water Act 1989 ([c.15](#)), section 10(1) of and paragraphs 7 to 13 of Schedule 3 Part I to the Electricity Act 1989 ([c.29](#)), and extended by paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 ([c.12](#)); section 3 was amended by paragraph 3 of Schedule 15(1) to the Planning and Compensation Act 1991 ([c.34](#)); section 4 was amended by section 182(1) of the Housing and Planning Act 2016 ([c.22](#)); section 4A was inserted by s202(1) of the Housing and Planning Act 2016 ([c.22](#)); section 5 was amended by section 67 Part III of the Planning and Compensation Act 1991 ([c.34](#)), section 192(2) Part 7 of the Housing and Planning

“the 1980 Act” means the Highways Act 1980(3);

Act 2016 (c.22) and paragraph 60 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 6 was amended by paragraph 61 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 7 was also extended by section 237(4)(a) of the Town and Country Planning Act 1990 (c.8), and by section 78(2)(a), and paragraph 5(4) of Schedule 10 Part II to the Housing Act 1988 (c.50); section 8 was amended by paragraphs 62(b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraph 2 of Schedule 17(1) to the Housing and Planning Act 2016 (c.22); section 9 was also amended by section 1(1) of and Schedule 1 to the Statute Law (Repeals) Act 1973 (c.39), section 52(10)(a) of the Land Compensation Act 1973 (c.26), section 13(3) and paragraphs 4 and 5 to Schedule 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), section 146(10) of the Town and Country Planning Act (c.8) and by section 54(7) of the Land Compensation Act (c.26); section 10 was amended by paragraph 63 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraphs 13(2)(a) and (b) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11); section 11 was amended by section 186(2), section 187(2), section 188 and paragraph 6 of Schedule 14 to the Housing and Planning Act 2016 (c.22), paragraphs 14(3)(a) and (b) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1, and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 11A was added by section 186(3) of the Housing and Planning Act 2016 (c.22); section 11B was added by section 187(3) of the Housing and Planning Act 2016 (c.22); section 12(6) was amended by paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c.22); section 13 was amended by section 139 (5) to (9), paragraph 28(2) of Schedule 13 and paragraph 1 of Schedule 23(3) to the Tribunals, Courts and Enforcement Act 2007 (c.15); section 15 was amended by paragraph 65 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 16 was amended by paragraph 66 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 17 was amended by paragraph 67 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 18 was amended by paragraph 68 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 19 was amended by paragraph 69 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 20 was amended by paragraph 4 of Schedule 15(1) to the Planning and Compensation Act 1991 (c.34) and paragraph 70 of Schedule 1 to the Transfer of Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 22 was also modified by section 13(3) of and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), and excluded by section 10(3) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66); section 23 was amended by paragraph 4(1) of Schedule 11(2) to the Constitutional Reform Act 2005 c.4; section 24 was also amended by section 17(2)(3) and Schedule 2 to the Rentcharges Act 1977 (c.30); section 25 was amended by paragraph 4(1) of Schedule 11(2) to the Constitutional Reform Act 2005 (c.4) and s1(1) and Part IX of Schedule 1 to the Statute Law (Repeals) Act (c.39); Section 26 was also amended by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34); section 27 was repealed by article 3 and Schedule 1 to S.I. 1990/776; section 29 was repealed by paragraph 1 of Schedule 23(3) to the Courts and Enforcement Act 2007 (c.15); section 30 was also amended by section 34(1) and paragraph 14(4) of Schedule 4 to the Acquisition of Land Act 1981 (c.67); section 31 was amended by section 34(1) and paragraph 14(5) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 19(b) of Schedule 15(II) to the Planning and Compensation Act 1991 (c.34) and paragraph 12(2) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1; Section 32 was also amended by section 34(1), and paragraph 14(6) of Schedule 4 to the Acquisition of Land Act 1981 (c.67); Paragraph 10 of Schedule 1 was amended by Schedule 9(3), Schedule 3 Part II paragraph 5 of the Gas Act 1986 (c.44), sections 10 and 14(4) of the Land Commission Act 1967 (c.1), section 28(4) and Schedule 3 paragraph 3 of the Courts Act 1971 (c.23), sections 47(6) and 52(2) of the Highways Act 1971 (c.41), section 10(1) and Schedule 3 paragraphs 6 to 13 of the Electricity Act 1989 (c.29), section 78(2)(b) and Schedule 10 Part III paragraph 20–23 of the Housing Act 1988 (c.50), section 578 of the Housing Act 1985 (c.68), section 37(4) of the Land Drainage Act 1976 (c.70), sections 6(2),(4),(6),(7) and 27, Schedule 4 Part II and Schedule 7 paragraph 5(5) of the Development of Rural Wales Act 1976 (c.75), article 4 of S.I. 1978/268, section 250 and Schedule 19 of the Highways Act 1980 (c.66), section 245(4) of the Town and Country Planning Act 1990 (c.8), section 151(5) and Schedule 18 paragraph 2(1) with sections 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4) to (10), 190, 193(1), Schedule 26 paragraphs 3(1)(2), 17, 40(4), 57(6), 58) of the Water Act 1989 (c.15), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 (c.57), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 30(1) of the Acquisition of Land Act 1981 (c.67), and section 129 of the Local Government Act 1972 (c.70) Words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 (c.62) and modified by section 13(3) and Schedule 3 paragraphs 4 and 5 of Agriculture (Miscellaneous Provisions) Act 1968 (c.34); paragraph 2 of Schedule 2 was modified by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), section 10(2) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), paragraph 14 of Schedule 3A to the Town and Country Planning Act 1968 (c.72) and Schedule 2, Appendix A to the Land Commission (Dissolution) Act 1971 (c.18); paragraph 13 of Schedule 2A was amended by paragraph 3 of Schedule 17(1) to the Housing and Planning Act 2016 (c.22). There are other amendments to the 1965 Act which are not relevant to this Order.

- (3) 1980 c.66. Section 328 was amended by sections 27, 28 and 54 of, and paragraphs 1(2) of Part I and 2 of Part III of Schedule 2 to, the Town and Country Planning Act 1990 (c.8), by sections 3 and 19 of, and paragraph 9 of Schedule 3 to, the Dartford–Thurrock Crossing Act 1988 (c.20), s35, and by paragraphs 7(1) and 10(1) of Schedule 4 to the Channel Tunnel Act 1987 (c.53), and extended by sections 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4) to (10), 190, 193(1) of, and paragraph 1(2) (xxv)(8) of Schedule 25 and paragraphs 3(1)(2), 17, 40(4), 57(6), and 58 of Schedule 26 to, the Water Act 1989 (c.15), and by section 112(1)(3) of, and paragraph 2(4)(d)(6)(9) of Schedule 16, paragraphs 33 and 35(1) of Schedule 17 to, the Electricity Act 1989 (c.29), and by section 67(1)(3) of, and paragraph 2(1)(xl) of Schedule 7 and paragraph 33 of Schedule 8 to, the Gas Act 1986 (c.44). There are other amendments to the 1980 Act which are not relevant to this Order.

- “the 1984 Act” means the Road Traffic Regulation Act 1984(4);  
“the 1986 Act” means the Gas Act 1986(5)  
“the 1989 Act” means the Electricity Act 1989(6)  
“the 1990 Act” means the Town and Country Planning Act 1990(7);  
“the 1991 Act” means the New Roads and Street Works Act 1991(8);

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- (4) 1984 c.27.
- (5) 1986 c.44. Relevant amendments are as follows: a new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by sections 3(2) and 76(3) and 76(4) of and paragraph 4 of Schedule 6(1) and paragraph 1 of schedule 8 to the Utilities Act 2000 (c.27), regulation 18(2). (3), (4) and (5) of the Electricity and Gas (Internal Markets) Regulations 2011/2704 and section 149(5) of the Energy Act 2004 (c.20); section 48 was amended by paragraph 1 of Schedule 6 to the Gas Act 1995 (c.45).
- (6) 1989 c.29. Relevant amendments are as follows: section 6 was amended by section 30 of the Utilities Act 2000 (c.27), sections 89(3), 136(1), 136(2), 145(5), 145(6), and 145(7), and paragraph 5 of Schedule 19 and paragraph 1 of Schedule 23(1) to the Energy Act 2004 (c.20), articles 6(2)(a), 6(2)(b), 6(3), 6(4) of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012/2400, regulation 19 of the Electricity and Gas (Internal Markets) Regulations 2011/2704, and by paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c.27); section 64 was amended by the Utilities Act 2000 (c.27) Schedule 6, paragraph 38(3);
- (7) 1990 c.8. Section 106 was amended by section 12(1) of the Planning and Compensation Act 1991 (c.34), paragraphs 3(2) and 3(3) of Schedule 2 to the Growth and Infrastructure Act 2013 (c.27), section 33 of the Greater London Authority Act 2007 (c.24), and by section 174(2)(a) to (c) of the Planning Act 2008 (c.29); section 153(4) was inserted by section 200 of the Housing and Planning Act 2016 (c.22); section 264 was amended by paragraph 54 of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60), paragraph 9 of Schedule 3(1) to the British Waterways Board (Transfer of Functions) Order 2012/1659, paragraph 14 of Schedule 1(1) to the Transport for London (Consequential Provisions) Order 2003/1615, paragraphs 20(a) and 20(b) of Schedule 12 to the Localism Act 2011 (c.20), paragraph 18 of Schedule 4(2) to the Infrastructure Act 2015 (c.7), and by paragraph 13(a)(i) of Schedule 1(III) to the Transport Act 2000 (Consequential Amendments) Order 2001/4050. There are other amendments to the 1990 Act which are not relevant to this order.
- (8) 1991 c.22. Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26); section 49 was amended by paragraphs 117(a) and 117(b) of Schedule 1(2) to the Infrastructure Act 2015 (c.7); section 50 was amended by section 124(3) of the Local Transport Act 2008 (c.26); section 51 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 54 was amended by the transitional provisions specified in article 6(1) to (3) and (5) of SI 2007/3174 and by section 49(1) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 55 was amended by section 51(9) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18), and subject to transitional provisions specified in article 6(4) and (5) of SI 2007/3174 by section 49(2) of the Traffic Management Act 2004 (c.18); section 56 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18), and wording was amended subject to transitional provisions specified in article 5 of SI 2007/3174 by section 43 of the Traffic Management Act 2004 (c.18); section 56A was inserted subject to transitional provisions specified in article 4 of SI 2007/1890 and article 5 of SI 2007/3174 by section 44 of the Traffic Management Act 2004 (c.18); section 57 was amended by section 52(3) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 58 was amended subject to transitional provisions specified in article 7 of SI 2007/3174 and article 6 of SI 2007/1890 by section 51 of the Traffic Management Act 2004 (c.18) and amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 58A was inserted subject to transitional provisions specified in article 7 in SI 2007/1890 and article 8 in 2007/3174 by section 52(1) of the Traffic Management Act 2004 (c.18); section 59 was amended by section 42 of Traffic Management Act 2004 (c.18); section 60 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 63 was amended by paragraph 118 of Schedule 1(2) to the Infrastructure Act 2015 (c.7); section 64 was amended by section 52(4) of the Traffic Management Act 2004 (c.18) and by paragraph 12 of Schedule 7 to the Road Traffic Act 1991 (c.40); section 65 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 66 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 67 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 68 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 69 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 70 was amended subject to transitional provisions specified in article 9 in SI 2007/3174 by section 54 of the Traffic Management Act 2004 (c.18) by section 40(3) of that same Act; section 71 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 74 was amended by sections 256(2), (3)(a), (3)(b), (4), (5), (6) and (7) of the Transport Act 2000 (c.38), sections 40(4) and 52(5) of the Traffic Management Act 2004 (c.18) and by paragraph 119 of Schedule 1(2) to the Infrastructure Act 2005 (c.7); section 74A was amended by section 255(1) of the Transport Act 2000 (c.38), section 40(4) of the Traffic Management Act 2004 (c.18) and by paragraphs 120(2) and 120(3) of Schedule 1(2) to the Infrastructure Act 2015 (c.7); section 74B was amended by section 255(1) of the Transport Act 2000 (c.38); Section 79 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 83 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 86 was added by paragraph 121 of Schedule 1(2) to the Infrastructure Act 2015 (c.7); section 88 was amended by sections 52(6) and 40(5) of the Traffic Management Act 2004 (c.18); section 89 was amended by section 52(7) of the Traffic Management Act 2004 (c.18) and by paragraph 57(1) of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60); section 92 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); section 93 was amended by section 49(3) of the Traffic Management Act 2004 (c.18); section 95A was inserted subject to transitional provisions specified in article 3 of SI 2007/1890 and article 3 of SI 2007/3174 by section 41(1) of the Traffic Management Act 2004 (c.18); section 106 was amended by section 41(2) of the Traffic Management Act 2004 (c.18) and by paragraph 122 of Schedule 1(2) of the Infrastructure Act 2015 (c.7). There are other amendments to the 1991 Act which are not relevant to this Order.

“the 2008 Act” means the Planning Act 2008(9);

“Abergelli Power Limited” means Abergelli Power Limited (Company No. 8190497) whose registered office is at Drax Power Station, Drax, Selby, United Kingdom, YO8 8PH;

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

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

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

“book of reference” means the book of reference with submission document reference number 4.3 and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commence” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including investigations necessary for the discharge of requirements 14 (site investigation), 15 (mineral resources survey) and 16 (peat management plan)) receipt and erection of construction plant and equipment, erection of any temporary means of enclosure associated with and for the duration of the other works excluded from this definition of commence, the temporary display of site notices or advertisements and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of testing all systems and components of the authorised development (which are installed or in relation to which installation is near complete) in order to ensure that they, and the authorised development as a whole, functions in accordance with the plant design specifications and the undertaker’s operational and safety requirements;

“date of completion of construction” means the date on which the construction of the authorised development is complete including rectification of any construction defects, landscaping and reinstatement works;

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

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- (9) **2008 c.29.** Section 14 was amended by article 2(2) of the Infrastructure Planning (Waste Water Transfer and Storage) Order 2012/1645 and by articles 2(2)(a) and 2(2)(b) of the Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015/949; section 74 was amended by Localism Act 2011 (c.20) Schedule 25(20) paragraph 1 and Schedule 13(1) paragraph 29(3) of the Localism Act 2011 (c.20); section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of section 25(20) to the Localism Act 2011; section 103 was amended by paragraph 48(4) of Schedule 13(1) and paragraph 1 of Schedule 25(20) to the Localism Act 2011; Section 104 was amended by paragraphs 49(2),(3)(a),(3)(b), (3)(c), (4), (5)(a), (5)(b), (6) and (7) of Schedule 13(1) to the Localism Act 2011, and by section 58(5) of the Marine and Coastal Access Act 2009 (c.23); section 114 was amended by paragraphs 55(2)(a), (2)(b) and (3) of Schedule 13(1) to the Localism Act 2011; section 115 was amended by paragraph 1 of Schedule 25(20) to the Localism Act 2011, section 160(2) to (6) of the Housing and Planning Act 2016 (c.22) and section 160(3) and (4) of the Wales Act 2017 (c.4); section 120 was amended by section 140 and paragraph 60(2) and (3) of Schedule 13(1) to the Localism Act 2011; section 122 was amended by paragraph 62 of Schedule 13(1) to the Localism Act 2011; section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016 (c.22); Section 127 was amended by section 23(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013, (c.27) and by paragraph 64(2) of Schedule 13(1) to the Localism Act 2011; section 134 was amended by section 142(2)(a) and (3) and paragraph 1 of Schedule 25(21) to the Localism Act 2011 and paragraphs 6(1)(a) and 6(1)(b) of Schedule 1 to the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017/16; section 138 was amended by section 23(4)(a) to (c) of the Growth of Infrastructure Act 2013 (c.27); section 152 was amended by paragraph 293 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; section 161 was amended by paragraph 4(3) of Schedule 8(1) to the Marine and Coastal Access Act 2009 (c.23) and by paragraphs 41(3)(a) and 41(3)(b) of Schedule 4(1) to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664.

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

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

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

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

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

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

“gas turbine generator” means one gas turbine which drives a single electricity generator for the purposes of generating electricity including air inlet filter house, air inlet duct, exhaust diffuser, and auxiliaries such as lube oil system, air dryers, fuel gas filter package, instrument air system and compressor washing;

“gross rated electrical output” means the aggregate of gross electrical power as measured at the terminals of the generator in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2016<sup>(10)</sup>;

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

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

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

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

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development but only insofar as such activities are unlikely to give rise to any materially new or different environmental effects from those assessed in the environmental statement and for the avoidance of doubt “maintain” shall not entitle the undertaker to remove or reconstruct the whole of work no. 1, and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” has the definition set out in paragraph 18 of Schedule 11 to this Order;

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

“Order limits” means the limits shown on the works plans;

“outline construction environment management plan” means the outline construction environment management plan revision 2 which is certified as the outline construction environmental management plan by the Secretary of State for the purposes of this Order;

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(10) S.I. 2016/1154.

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

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

“outline drainage strategy” means the outline drainage strategy revision 1 which is certified as the outline drainage strategy by the Secretary of State for the purposes of this Order;

“outline landscape and ecological mitigation strategy” means the outline landscape and ecological mitigation strategy revision 4 which is certified as the outline landscape and ecological mitigation strategy by the Secretary of State for the purposes of this Order;

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

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

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(11);

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

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

“rights of way, streets and access plan” means the plan with submission document reference number 2.4 revision 1 and which is certified as the rights of way, streets and access plan by the Secretary of State for the purposes of this Order;

“shut down period” means the period set out in requirement 23 during which construction workers may return to the site office to return safety and other equipment, attend debrief sessions, change clothing and prepare to leave site but during which period no plant or machinery may be operated other than site maintenance machinery and plant such as generators, wheel washes and road sweepers;

“start-up period” means the period set out in requirement 23 during which construction workers may arrive at site, sign in, don personal protective equipment, attend safety and other briefings and mobilise on site but during which no plant or machinery may be operated;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and includes a public communications provider as defined by the Communications Act 2003(12);

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

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

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

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(11) 1981. c.67. Section 7 was amended by paragraph 9 of Schedule 15(I) to the Planning and Compensation Act 1991 (c.34). Paragraph 3 in Part III of Schedule 2 was amended by Schedule 1 to S.I. 2009/1307. There are other amendments to section 7 which are not relevant to this Order.

(12) 2003 c.21. Section 106 was amended by section 4, subsections (4) to (9) of the Digital Economy Act 2017 (c.30); section 151(1) was amended by Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations (S.I. 2011/1210), and Schedule 3A was inserted by paragraph 1 of Schedule 1 to the Digital Economy Act 2017 and regulations 3 and 4 of S.I. 2017/1008.

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

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

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

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

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

(3) All distances, directions and lengths referred to in this Order (save for the parameters set out in Table 2 of Schedule 2) are approximate and distances between lines or points on a numbered work comprised in the authorised development and shown on the works plan and rights of way, streets and access plan are to be taken to be measured along that work.

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

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

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

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

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

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

#### **Commencement Information**

**I2** Art. 2 in force at 10.10.2019, see [art. 1](#)

## **PART 2**

### **PRINCIPAL POWERS**

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

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

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

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

**Commencement Information**

**I3** Art. 3 in force at 10.10.2019, see [art. 1](#)

**Maintenance of authorised development**

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

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

**Commencement Information**

**I4** Art. 4 in force at 10.10.2019, see [art. 1](#)

**Operation of authorised development**

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

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

**Commencement Information**

**I5** Art. 5 in force at 10.10.2019, see [art. 1](#)

**Benefit of this Order**

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

**Commencement Information**

**I6** Art. 6 in force at 10.10.2019, see [art. 1](#)

**Consent to transfer benefit of the Order**

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

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

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



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

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

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

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

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

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

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

(8) The notice given under [<sup>F1</sup>paragraph (5)] must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(9) The undertaker must also send a copy of the notice given under [<sup>F2</sup>paragraph (5)] to the relevant planning authority.

#### Textual Amendments

- F1** Words in art. 7(8) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), art. 1(2), **Sch.**
- F2** Words in art. 7(9) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), art. 1(2), **Sch.**

#### Commencement Information

- I7** Art. 7 in force at 10.10.2019, see [art. 1](#)

## PART 3

### STREETS

#### Power to alter layout etc. of streets

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

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

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places.

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

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

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

#### Commencement Information

**18** Art. 8 in force at 10.10.2019, see [art. 1](#)

#### Street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street or change its position or remove it;
- (e) carry out all necessary works required for the execution of the works required under article 8 (power to alter layout etc. of streets) including removal and relocation or reinstatement of drainage, fence lines and signage and pruning or removal of vegetation to improve visibility; and
- (f) execute any works required for or incidental to any works referred to in subparagraphs (a), (b), (c), (d) and (e).

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

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

### Commencement Information

**19** Art. 9 in force at 10.10.2019, see [art. 1](#)

### Construction and maintenance of new or altered means of access

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

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

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

(4) Those restoration works carried out pursuant to article [8\(3\)](#) identified in Part 4 of Schedule 5 which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

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

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

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

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

#### Commencement Information

**I10** Art. 10 in force at 10.10.2019, see [art. 1](#)

### Temporary prohibition or restriction of use of streets

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

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

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

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

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

- (5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—
- (a) any street specified in paragraph (4) without first consulting the street authority; and
  - (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) Any person who suffers loss by the temporary alteration, diversion, prohibition or restriction under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

#### Commencement Information

**I11** Art. 11 in force at 10.10.2019, see [art. 1](#)

### Stopping up of streets

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

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

- (3) The conditions referred to in paragraph (2) are that—
- (a) the undertaker is in possession of the land; or
  - (b) there is no right of access to the land from the street concerned; or

- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
  - (d) the owners and any lessee of the land have agreed to the stopping up.
- (4) Where a street has been stopped up under this article—
- (a) all rights of way over or along the street so stopped up shall be extinguished; and
  - (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is stopped up under paragraph (1).
- (5) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (6) This article is subject to article 31 (apparatus and rights of statutory undertakers in streets).

**Commencement Information**

**I12** Art. 12 in force at 10.10.2019, see [art. 1](#)

**Access to works**

- 13.** The undertaker may, for the purposes of the authorised development—
- (a) form and layout the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 3 (streets subject to permanent and temporary alteration of layout);
  - (b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 3 (streets subject to permanent and temporary alteration of layout); and
  - (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order land as the undertaker reasonably requires for the purposes of the authorised development.

**Commencement Information**

**I13** Art. 13 in force at 10.10.2019, see [art. 1](#)

**Agreements with street authorities**

- 14.—(1)** A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) the maintenance of the structure of any bridge or tunnel carrying a street;
  - (d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order; or
  - (e) the carrying out in the street of any of the works referred to in article 10(1) (construction and maintenance of new or altered means of access).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

#### Commencement Information

**I14** Art. 14 in force at 10.10.2019, see [art. 1](#)

### Traffic Regulation

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

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road,

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

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

- (a) given not less than 4 weeks’ notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker’s intention in the case of sub-paragraph (a).

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

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(13).

(4) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

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

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(13) 2004 c.18. There are amendments to this Act not relevant to this Order.

**Commencement Information**

**I15** Art. 15 in force at 10.10.2019, see [art. 1](#)

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**14**) (right to communicate with public sewers).

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

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

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**15**) have the same meaning as in that Act.

**Commencement Information**

**I16** Art. 16 in force at 10.10.2019, see [art. 1](#)

(14) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2) to (5) and 36(2) of the Water Act 2003 (c.37).

(15) 1991 c.57 as amended by S.I. 2009/3104.

### Authority to survey and investigate the land

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

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

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

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

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

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

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

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

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

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#### Commencement Information

I17 Art. 17 in force at 10.10.2019, see [art. 1](#)

## PART 5

### POWERS OF ACQUISITION

#### Compulsory acquisition of land

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



(2) This article is subject to article 22 (compulsory acquisition of rights etc.), article 25 (acquisition of subsoil only) and article 28 (temporary use of land in connection with carrying out the authorised development).

**Commencement Information**

**I18** Art. 18 in force at 10.10.2019, see [art. 1](#)

**Compulsory acquisition of land – incorporation of the mineral code**

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

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

**Commencement Information**

**I19** Art. 19 in force at 10.10.2019, see [art. 1](#)

**Statutory authority to override easements and other rights**

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

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

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

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

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

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

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

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

**Commencement Information**

**I20** Art. 20 in force at 10.10.2019, see [art. 1](#)

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

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

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

(b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(16)</sup> as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

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

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#### Commencement Information

**I21** Art. 21 in force at 10.10.2019, see [art. 1](#)

#### Compulsory acquisition of rights etc.

**22.**—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under [<sup>F3</sup>article 18] (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

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

(3) Subject to section 8 of the 1965 Act (provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) (as substituted by paragraph 9 of Schedule 8 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictions)), where the undertaker creates or acquires a right over land or imposes a restriction under paragraph (1) or (2), the undertaker is not to be required to acquire a greater interest in that land.

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

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

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

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

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<sup>(16)</sup> 1981 c.66. Section 4 was amended by sections 184, 185 and paragraph 2 of Schedule 18(1) to, the Housing and Planning Act 2016 (c.22). There are further amendments to that Act made by the Housing and Planning Act 2016 that are relevant to the amendment of section 4.

### Textual Amendments

- F3** Words in [art. 22](#) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), [art. 1\(2\)](#), [Sch.](#)

### Commencement Information

- I22** Art. 22 in force at 10.10.2019, see [art. 1](#)

## Private rights

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

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

whichever is the earliest.

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

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

whichever is the earliest.

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

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

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

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 30 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land,
  - (ii) the undertaker's appropriation of it,
  - (iii) the undertaker's entry onto it, or

- (iv) the undertaker’s taking temporary possession of it, that any or all of those paragraphs are not to apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested, belongs or benefits.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
  - (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

#### Commencement Information

**I23** Art. 23 in force at 10.10.2019, see [art. 1](#)

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

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

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 5(2) (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.

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

(5) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order) the three year period mentioned in section 5A” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 2019.”.

(6) In section 6 (notices after execution of declaration), in subsection 1(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

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

(8) In Schedule A1 (counter–notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute “(2) But see article 25(3) (acquisition of subsoil only) of the Abergelli Power Gas Fired Generating Station Order 2019, which excludes the acquisition of subsoil only from this Schedule”.

(9) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 must be construed as references to that Act as applied by section 125 of the 2008 Act (and as modified by article 26 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

**Commencement Information**

**I24** Art. 24 in force at 10.10.2019, see [art. 1](#)

**Acquisition of subsoil only**

**25.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter–notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter–notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

**Commencement Information**

**I25** Art. 25 in force at 10.10.2019, see [art. 1](#)

**Modification of Part 1 of the Compulsory Purchase Act 1965**

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

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

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in [F4 article 21] (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 2019”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “[F5 article 21] (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 2019”.

(5) In Schedule 2A (counter–notice requiring purchase of land not in notice to treat)—

- (a) for paragraphs 1(2) and 14(2) substitute in both places—  
“(2) But see article 25(3) (acquisition of subsoil only) of the Abergelli Power Gas Fired Generating Station Order 2019, which excludes the acquisition of subsoil only from this Schedule.”; and
- (b) after paragraph 29, insert—

## “PART 4 INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 28 (temporary use of land in connection with carrying out the authorised development) or article 29 (temporary use of land for maintaining the authorised development) of the Abergelli Power Gas Fired Generating Station Order 2019.”.

### Textual Amendments

- F4** Words in art. 26(2) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), art. 1(2), [Sch.](#)
- F5** Words in art. 26(4) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), art. 1(2), [Sch.](#)

### Commencement Information

- I26** Art. 26 in force at 10.10.2019, see [art. 1](#)

### Rights under or over streets

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

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

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

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

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

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

**Commencement Information**

**I27** Art. 27 in force at 10.10.2019, see [art. 1](#)

**Temporary use of land in connection with the carrying out of the authorised development**

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

- (a) enter on and take possession of—
  - (i) so much of the land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 9 (land of which temporary possession may be taken), or any other mitigation works.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

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

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article.

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

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

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in

respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

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

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in part 1 of the book of reference under article 22 (compulsory acquisition of rights etc.); or
- (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 25 (acquisition of subsoil only) or article 27 (rights under or over streets).

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

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

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

(13) The provisions of the Neighbourhood Planning Act 2017(17) do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development necessary for the authorised development within the Order land.

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#### **Commencement Information**

**I28** Art. 28 in force at 10.10.2019, see [art. 1](#)

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

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

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

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

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

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

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



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

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

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

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

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

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

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

(12) The provisions of the Neighbourhood Planning Act 2017(18) do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the authorised development and other development necessary for the authorised development within the Order land.

#### Commencement Information

**I29** Art. 29 in force at 10.10.2019, see [art. 1](#)

#### Statutory undertakers

- 30.** Subject to the provisions of Schedule 11 (protective provisions), the undertaker may—
- acquire compulsorily the land belonging to statutory undertakers within the Order land;
  - extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to statutory undertakers on, under, over or within the Order land; and
  - create and acquire compulsorily the [<sup>F6</sup>rights or] impose restrictions over any Order land belonging to statutory undertakers.

#### Textual Amendments

**F6** Words in [art. 30\(c\)](#) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), [art. 1\(2\)](#), [Sch.](#)

#### Commencement Information

**I30** Art. 30 in force at 10.10.2019, see [art. 1](#)

#### Apparatus and rights of statutory undertakers in streets

**31.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary prohibition or restriction of use of streets) or where a street is stopped up under article 12 (stopping up of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 11 (protective provisions), as if this Order had not been made.

#### Commencement Information

**I31** Art. 31 in force at 10.10.2019, see [art. 1](#)

#### Recovery of costs of new connections

**32.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under [<sup>F7</sup>article 30] (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 30, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which [<sup>F8</sup>article 31] (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

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

#### Textual Amendments

**F7** Words in [art. 32\(1\)](#) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), [art. 1\(2\)](#), [Sch.](#)

**F8** Words in [art. 32\(3\)](#) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), [art. 1\(2\)](#), [Sch.](#)

### Commencement Information

**I32** Art. 32 in force at 10.10.2019, see [art. 1](#)

### Funding

**33.**—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

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

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 20 (statutory right to override easements);
- (c) article 22 (compulsory acquisition of rights etc.);
- (d) [F<sup>9</sup>article 23] (private rights);
- (e) article 25 (acquisition of subsoil only);
- (f) article 27 (rights under or over streets);
- (g) article 28 (temporary use of land in connection with the carrying out of the authorised development);
- (h) article 29 (temporary use of land for maintaining the authorised development); and
- (i) article 30 (statutory undertakers).

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

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

### Textual Amendments

**F9** Words in art. 33(2)(d) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), art. 1(2), [Sch.](#)

### Commencement Information

**I33** Art. 33 in force at 10.10.2019, see [art. 1](#)

## PART 6

### OPERATIONS

#### Felling or lopping of trees and removal of hedgerows

**34.**—(1) The undertaker may, subject to paragraph (3), fell or lop any tree or shrub within or overhanging land within the Order land or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

(2) The undertaker may, for the purposes of the authorised development and subject to paragraph (3), remove any hedgerows within the Order land and specified in Schedule 10 (removal of hedgerows).

(3) In carrying out any activity authorised by paragraph (1) or [<sup>F10</sup>(2)], the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(5) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997<sup>(19)</sup>.

#### Textual Amendments

**F10** Word in [art. 34\(3\)](#) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), [art. 1\(2\)](#), [Sch.](#)

#### Commencement Information

**I34** Art. 34 in force at 10.10.2019, see [art. 1](#)

## PART 7

### MISCELLANEOUS AND GENERAL

#### Application of landlord and tenant law

**35.**—(1) This article applies to—

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

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

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

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<sup>(19)</sup> [S.I. 1997/1160](#).

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

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

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**Commencement Information**

**I35** Art. 35 in force at 10.10.2019, see [art. 1](#)

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

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

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**Commencement Information**

**I36** Art. 36 in force at 10.10.2019, see [art. 1](#)

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

**37.—(1)** Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**20**) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(**21**);
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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**(20)** [1990 c.43](#). Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 ([c.16](#)); section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

**(21)** [1974 c.40](#). Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 ([c.22](#)) and section 112(1)(3), paragraphs 33 and 35 of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the 1989 Act; section 61 was amended by section 133(2) and Schedule 7 to the Building Act 1984 ([c.55](#)), Schedule 24 to the Environment Act 1995 ([c.25](#)), and section 162(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 ([c.43](#)). There are other amendments not relevant to this Order.

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

**Commencement Information**

**I37** Art. 37 in force at 10.10.2019, see [art. 1](#)

**Protective provisions**

**38.** Schedule 11 (protective provisions) has effect.

**Commencement Information**

**I38** Art. 38 in force at 10.10.2019, see [art. 1](#)

**Certification of plans etc.**

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

- (a) the book of reference;
- (b) design principles statement;
- (c) the environmental statement, which includes within its appendices the following—
  - (i) outline construction environment management plan;
  - (ii) outline landscape and ecological mitigation strategy;
  - (iii) outline surface water management plan;
  - (iv) flood consequences assessment;
  - (v) outline drainage strategy;
  - (vi) outline construction traffic management plan;
  - (vii) outline construction staff travel plan;
  - (viii) outline lighting strategy;
- (d) the land plans;
- (e) the rights of way, streets and access plan; and
- (f) the works plans; and
- (g) hedgerow plan,

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

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

**Commencement Information**

**I39** Art. 39 in force at 10.10.2019, see [art. 1](#)

## Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to <sup>F11</sup>paragraphs (5) to (8)], by electronic transmission.

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

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(22)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

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

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

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

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

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

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

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

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

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

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<sup>(22)</sup> 1978 c.30. Section 7 was amended by section 144 and paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

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

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

#### Textual Amendments

**F11** Words in [art. 40\(1\)\(c\)](#) substituted (10.1.2020) by [The Abergelli Gas Fired Generating Station \(Correction\) Order 2020 \(S.I. 2020/22\)](#), [art. 1\(2\)](#), [Sch.](#)

#### Commencement Information

**I40** Art. 40 in force at 10.10.2019, see [art. 1](#)

### Procedure in relation to certain approvals

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

(2) Any consent, agreement or approval given under paragraph (1) above may be given subject to conditions.

(3) Schedule 12 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements in Schedule 2 (requirements).

(4) Save for applications made pursuant to Schedule 12, if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed with the undertaker in writing) it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) The procedure set out in paragraph 3 of Schedule 12 has effect in relation to any refusal by an authority or an owner as referred to in paragraph (1) of this article to any consent, agreement or approval required under this Order, as if such a refusal were in respect of an application to discharge a requirement.

(6) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the relevant article of this Order under which consent is sought, the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

#### Commencement Information

**I41** Art. 41 in force at 10.10.2019, see [art. 1](#)

### Arbitration

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



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**Commencement Information**

**I42** Art. 42 in force at 10.10.2019, see [art. 1](#)

**Application and modification of legislative provisions**

**43.** Regulation 6 of the Hedgerows Regulations 1997 is to be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“or

(k) to the extent specified in and for the purpose of carrying out development which has been authorised by an order granting development consent made pursuant to the Planning Act 2008.”.

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**Commencement Information**

**I43** Art. 43 in force at 10.10.2019, see [art. 1](#)

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

*Gareth Leigh*  
Head of Energy Infrastructure and Planning  
Department for Business, Energy and Industrial  
Strategy

19th September 2019

**Changes to legislation:**

There are currently no known outstanding effects for the The Abergelli Power Gas Fired Generating Station Order 2019.