

SCHEDULE 1

Articles 2, 3 and 4

PART 1

Authorised Works

Work No. 1

An offshore tidal generating station with a gross electrical output capacity of up to 240 megawatts within the array area comprising;

- (1) up to 620 tidal devices at any one time comprising
 - (a) seabed mounted sub-surface tidal devices and being fixed to the seabed by:
 - (i) gravity base; or
 - (ii) monopile type foundations; or
 - (iii) multi-pile type foundations;
 - (b) mid-water column tidal devices and being secured to the seabed by either:
 - (i) gravity base;
 - (ii) monopile type foundation;
 - (iii) multi-pile type foundation; or
 - (iv) anchors to a gravity base, monopile type foundation or multi-pile type foundation;
 - (c) floating or surface emergent tidal devices and being secured to the seabed by either:
 - (i) gravity base;
 - (ii) monopile type foundation;
 - (iii) multi-pile type foundation; or
 - (iv) anchors to a gravity base, monopile type foundation or multi-pile type foundation;
- (2) a network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed including cable crossings between—
 - (a) any of the tidal devices comprising Work No. 1(1);
 - (b) any of the tidal devices comprising Work No. 1(1) and operational hubs comprising Work No. 1(3) and any of the works comprising Work No. 2; or
 - (c) any hub comprising Work No. 1(3) to a cable comprising Work No. 2;
- (3) up to 120 offshore operational hubs comprising:
 - (a) up to 120 seabed mounted, fully submerged, hubs being fixed to the seabed by gravity base, monopile or multi-pile type foundation; or
 - (b) up to 93 floating surface emergent hubs being anchored to the seabed by gravity base, monopile type foundation or multi-pile type foundation; or
 - (c) up to 8 seabed mounted surface emergent offshore operational hubs being fixed to the seabed by gravity base, monopile type foundation or multi-pile type foundation;
- (4) up to 60 navigational and marker buoys;
- (5) up to 40 acoustic doppler current profilers;
- (6) up to 8 seabed mounted environmental monitoring units;
- (7) up to 5 sea level environmental monitoring buoys; and
- (8) cable crossings and connectors to connect Work No. 1(2) with Work No. 2.

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Work No. 2

Up to 9 export cables each comprising cables for the transmission of electricity and communication laid within the export cable corridor on or beneath the seabed between Work No. 1 and Work No. 3 including cable protection, cable crossings and connectors.

Work No. 3

Up to 9 export cables each comprising cables for the transmission of electricity and communication within the intertidal area either laid underground, over the surface of foreshore or within up to 9 open cut trenches with cable protection and connecting Work No. 2 and Work No. 4.

Work No. 4

Up to 9 export cables each comprising cable for the transmission of electricity and communication laid either underground, over the surface of foreshore cliff face and cliff top or within up to 9 open cut trenches with cable protection between Work No. 3 and the transition joint bays forming Work No. 5.

Work No. 5

Works comprising up to 9 transition joint bays connecting Work No. 4 with Work No. 6.

Work No. 6

Up to 9 export cables each comprising one or more conducting media for the transmission of electricity and communication laid underground connecting Work No. 5 to the electrical substation referred to in Chapter 2 of Part 2 of this Schedule 1.

Work No. 7

Up to 6 export cables for the transmission of electricity and up to 2 communication cables laid underground and transition joint bays and connecting the electrical substation to the switchgear infrastructure each referred to in Chapter 2 of Part 2 of this Schedule 1.

Work No. 8

Up to 6 export cables for the transmission of electricity each comprising one or more conducting media and up to 2 communication cables laid underground including transition joint bays from the switchgear infrastructure referred to in Chapter 2 of Part 2 of this Schedule 1 to Work No. 9.

Work No. 9

Up to 6 export cables for the transmission of electricity each comprising one or more conducting media and up to 2 communication cables installed by way of horizontal directional drills under both the A55 and the North Wales Coast Line railway line connecting Work No. 8 to the grid connection works referred to in Chapter 2 of Part 2 of this Schedule 1.

PART 2

Further Works

CHAPTER 1

(1) The undertaker may within the offshore Order limits construct maintain and operate such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction, operation, maintenance, repowering and decommissioning of the tidal works, namely—

- (a) temporary or permanent moorings or other means of accommodating vessels in the construction or maintenance of the scheduled works;
- (b) buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (c) work to alter the position of apparatus, including cables;

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(d) such other works and apparatus, plant and machinery of whatever nature as may be necessary or expedient.

(2) The undertaker may within the onshore Order limits construct maintain and operate such of the following works as may be necessary or expedient for the purposes of or for purposes ancillary to the construction, operation, maintenance and decommissioning of the onshore works, namely—

- (a) landscaping and screening works;
- (b) compounds and storage areas;
- (c) creation of draw pits for the onshore cable route;
- (d) hardstanding for transition joint bays;
- (e) connections to the telephone and water network;
- (f) works for the benefit or protection of land affected by the authorised works;
- (g) work to alter the position of apparatus, including cables; or
- (h) such other works and apparatus, plant and machinery of whatever nature as may be necessary or expedient.

CHAPTER 2

Without prejudice to the generality of Chapter 1 above the undertaker may within the land specified in column (2) of the table below construct the works mentioned in column (3).

<i>(1)</i> Area	<i>(2)</i> Number of land parcel shown on onshore plans	<i>(3)</i> Description of Works
Isle of Anglesey County	10	Electrical substation comprising— — an electricity substation with associated air conditioning and cooling; — cable connecting the substation to the export cables comprising Work No. 6 and Work No. 7; — separate building housing equipment used for the storage of electrical energy; — associated offices and welfare facilities; — construction compound; — associated joint pits with hard standing; — car parking, with electric vehicle charging points; and — construction of access works from South Stack Road.
Isle of Anglesey County	38a	Infrastructure including grid connection works to the distribution network and comprising— — up to 6 export cables for the transmission of electricity and up to 2 communication cables; — a switchgear building and associated metering annex.
Isle of Anglesey County	48, 49 and 50	Grid connection works to the existing electricity network comprising—

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land parcel shown on onshore plans</i>	<i>(3)</i> <i>Description of Works</i>
		<ul style="list-style-type: none"> — up to 6 export cables for the transmission of electricity and up to 2 communication cables; — up to 4 buildings; — energy storage systems with associated infrastructure; — cables for transmission of electricity; — communication cables; — a connection bay incorporating- — isolators; — circuit breakers; — power conditioning equipment.

PART 3

Area for Tidal Works

Array Area, export cable corridor, and restricted areas

<i>(1)</i> <i>Grid co-ordinates for</i>	<i>(2)</i> <i>Longitude</i>	<i>(3)</i> <i>Latitude</i>
<i>Array Area (as show on Figure 1-1 of the environmental statement)</i>		
1	04° 44' 8044"W	53° 20' 0232"N
2	04° 45' 8658"W	53° 17' 4900"N
3	04° 45' 8658"W	53° 15' 5400"N
4	04° 41' 4552"W	53° 15' 5400"N
5	04° 41' 0129"W	53° 15' 9503"N
6	04° 42' 5328"W	53° 18' 3882"N
7	04° 41' 2896"W	53° 20' 0232"N
<i>Export Cable Corridor (as shown on Figure 1-1 of the environmental statement)</i>		
5	04° 41' 0129"W	53° 15' 9503"N
6	04° 42' 5328"W	53° 18' 3882"N
7	04° 41' 2896"W	53° 20' 0232"N
8	04° 40' 8918"W	53° 19' 4553"N
9	04° 42' 1572"W	53° 18' 3923"N
10	04° 41' 4538"W	53° 18' 0234"N
11	04° 41' 3192"W	53° 17' 9827"N

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<i>(1)</i> <i>Grid co-ordinates for</i>	<i>(2)</i> <i>Longitude</i>	<i>(3)</i> <i>Latitude</i>
and between the coordinates comprising point 11 above following the mean high water spring level to the coordinates comprising point 12 below		
12	04° 41' 0437"W	53° 17' 4793"N
13	04° 41' 4248"W	53° 17' 2703"N
14	04° 41' 1701"W	53° 16' 8109"N
<i>Restricted Area - Northern (as shown on the restricted area plan)</i>		
3	4° 42' 1615"W	53° 19' 4682"N
4	4° 44' 0251"W	53° 19' 4682"N
5	4° 44' 9249"W	53° 18' 9282"N
6	4° 44' 9249"W	53° 18' 2196"N
17	4° 42' 5741"W	53° 17' 7330"N
16	4° 42' 9827"W	53° 18' 3882"N
19	4° 43' 7090"W	53° 18' 2230"N
<i>Restricted Area - UKC 20m(as shown on the restricted area plan)</i>		
1	4° 41' 2896"W	53° 20' 0232"N
15	4° 44' 8044"W	53° 20' 0232"N
14	4° 45' 8658"W	53° 17' 4900"N
13	4° 45' 8658"W	53° 15' 5400"N
12	4° 41' 4552"W	53° 15' 5400"N
11	4° 41' 0129"W	53° 15' 9503"N
10	4° 41' 1864"W	53° 16' 2282"N
8	4° 44' 0251"W	53° 16' 2282"N
7	4° 44' 9249"W	53° 17' 3082"N
5	4° 44' 9249"W	53° 18' 9282"N
4	4° 44' 0251"W	53° 19' 4682"N
2	4° 41' 7116"W	53° 19' 4682"N
<i>Restricted Area - UKC 8m (as shown on the restricted area plan)</i>		
2	4° 41' 7116"W	53° 19' 4682"N
3	4° 42' 1615"W	53° 19' 4682"N
16	4° 42' 9827"W	53° 18' 3882"N
9	4° 41' 6363"W	53° 16' 2282"N
10	4° 41' 1864"W	53° 16' 2282"N

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(1) <i>Grid co-ordinates for</i>	(2) <i>Longitude</i>	(3) <i>Latitude</i>
18	4° 42' 5328"W	53° 18' 3882"N

Article 3

PART 4

Documents to be submitted and approved by the Welsh Ministers

(1) <i>Document</i>	(2) <i>To be approved prior to these actions</i>
Cable Management Plan	Prior to the commencement of any related tidal works
Construction Environmental Management Plan	Prior to the commencement of any related tidal works
Decommissioning Programme	Prior to the decommissioning of any related tidal works
Detailed marine biodiversity enhancement strategy	Prior to each of the following activities: <ul style="list-style-type: none"> — the commencement of any related tidal works — the repowering of any related tidal work
Device Deployment Protocol	Prior to the deployment of any tidal device or operational hub which will be— <ul style="list-style-type: none"> — surface emergent in the restricted areas or the remainder of the array area — have an under keel clearance of less than 8 metres below lowest astronomical tide in the restricted area – UKC 8m — have an under keel clearance of less than 20 metres below lowest astronomical tide in the restricted area – UKC 20m
Environmental Mitigation and Monitoring Plan	Prior to each of the following activities— <ul style="list-style-type: none"> — the commencement of any related tidal works — the repowering of any related tidal works
Identification of Archaeological Exclusion Zones	Prior to the commencement of any related tidal works
Installation Methodology	Prior to the commencement of any related tidal works where trenching is required for laying of cables
Marine Mammal Mitigation Protocol	Prior to each of the following activities— <ul style="list-style-type: none"> — the commencement of any related tidal works — the repowering of any related tidal works — decommissioning of any related tidal works

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<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>To be approved prior to these actions</i>
Marine Pollution Contingency Plan	Prior to the commencement of any related tidal works
Updated Navigational Risk Assessment	Prior to each of the following activities— — the commencement of any tidal work — the repowering of any tidal work — the decommissioning of any tidal work
Pollution Prevention and Management Plan	Prior to the commencement of any related tidal works

SCHEDULE 2

Article 22

Additional land which may be acquired or used

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on onshore plan</i>	<i>(3)</i> <i>Purpose for which land may be acquired or used</i>
Isle of Anglesey	9	Access for construction and maintenance
	51	Access for construction and maintenance

SCHEDULE 3

Article 7

Streets Subject to Street Works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
Isle of Anglesey County	South Stack Road Wales Coastal path Unnamed road from South Stack Road to Ty Mawr Farm Lon Isallt Plas Road Porthdafarch Road Mill Road Footpath 19/021/2 A5153 (from junction with B4545) Access Road to Holyhead Leisure Centre, off A5153 Parc Cybi Unnamed road off Parc Cybi (Parc Cybi Spur)

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(1) Area	(2) Street subject to street works
	Unnamed road within Orthios Eco Parks (Anglesey) Ltd

SCHEDULE 4

Article 8

Streets to be Temporarily Stopped Up

(1) Area	(2) Street to be temporarily stopped up	(3) Extent of temporary stopping up
Isle of Anglesey County	South Stack Road	Within onshore Order limits
	Wales Coastal Road	Within onshore Order limits
	Unnamed road from South Stack Road to Ty Mawr Farm	Within onshore Order limits
	Lon Isallt	Within onshore Order limits
	Plas Road	Within onshore Order limits
	Porthdafarch Road	Within onshore Order limits
	Mill Road	Within onshore Order limits
	Footpath 19/021/2	Within onshore Order limits
	A5153 (from junction with B4545)	Within onshore Order limits
	Access road to Holyhead Leisure Centre, off A5153	Within onshore Order limits
	Parc Cybi	Within onshore Order limits
	Unnamed road off Parc Cybi (Parc Cybi Spur)	Within onshore Order limits
Unnamed road within Orthios Eco Parks (Anglesey) Ltd	Within onshore Order limits	

SCHEDULE 5

Article 9

Access to Works

(1) Area	(2) Description of access
Isle of Anglesey County	South Stack Road Lon Isallt Portdafarch Road

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(1) <i>Area</i>	(2) <i>Description of access</i>
	Mill Road Access road to Holyhead Leisure Centre, off A5153 Unnamed road off Parc Cybi (Parc Cybi Spur) London Road (A5)

SCHEDULE 6

Article 23

PART 1

Land in which only new rights may be acquired

(1) <i>Area</i>	(2) <i>Number of land shown on onshore plan</i>	(3) <i>Purpose for which rights may be acquired</i>
Isle of Anglesey	1 and 3a 9 and 51	Installation and maintenance of cables underground and/or with cable protection in connection with the authorised works Access for construction and maintenance of the authorised works

PART 2

Land over which restrictive covenants may be imposed

(1) <i>Area</i>	(2) <i>Number of land shown on onshore plan</i>	(3) <i>Purpose for which restrictive covenants may be imposed</i>
Isle of Anglesey	3, 8, 10, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 38, 38a, 39, 40, 42, 43, 48, 49 and 50	Protection of underground cables and infrastructure

SCHEDULE 7

Article 23

Modification of Compensation and Compulsory Purchase Enactments
for Creation of New Rights and the Imposition of Restrictive Covenants**Compensation enactments**

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

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 5(5) of Schedule 7 to the Morlais Demonstration Zone Order 2021);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the Morlais Demonstration Zone Order 2021) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5(2)—

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

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

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right or restrictive covenant over land consisting”;
- (b) for the word “severance” there is substituted the words “right or restrictive covenant over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and

(1) 1973 c. 26.

(d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

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

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

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

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

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

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

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

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

(3) Section 11(2) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority have served notice to treat in respect of any right or restriction as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 24(1) (application of Part 1 of the 1965 Act)), they have power, exercisable in the same circumstances and subject to the same conditions, to enter for the purpose of exercising that right or enforcing that covenant; and sections 11A(3) (powers of entry: further notices of

(2) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 6 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(3) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

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entry), 11B(4) (counter-notice requiring possession to be taken on specified date), 12(5) (penalty for unauthorised entry) and 13(6) (refusal to give possession to acquiring authority) of that Act are modified accordingly.

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

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

(6) For Schedule 2A(7) to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory, and have not executed a general vesting declaration under section 4 of the 1981 Act in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (power to acquire subsoil only) of the Morlais Demonstration Zone Order 2021 which excludes the acquisition of subsoil only from this schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

(4) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.

(5) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016.

(6) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(7) Inserted by section 199(1) and paragraphs 1 and 3 of Part 1 of Schedule 17 to the Housing and Planning Act 2016.

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6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the restrictive covenant,
- (b) the proposed use of the right or the restrictive covenant, and
- (c) if the right is proposed to be acquired or the restrictive covenant is proposed to be imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the restrictive covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

The 1981 Act

6.—(1) The 1981 Act, as applied by article 25 (application of the 1981 Act) to the acquisition of land under article 22 (power to acquire land), applies to a compulsory acquisition of a right or the imposition of a restrictive covenant under article 23 (power to acquire new rights and impose restrictive covenants)—

- (a) with the modifications specified in paragraph 7; and

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(b) with such other modifications as may be necessary.

(2) The enactments relating to compensation for the compulsory purchase of land also apply to a compulsory acquisition of a right or the imposition of a restrictive covenant under article 23.

7.—(1) The modifications referred to in paragraph 6(1)(a) are as follows.

(2) References in the 1981 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is, or is to be, exercisable, or over which the restrictive covenant is, or is to be, enforced.

(3) References in the 1981 Act to the 1965 Act are to be read as references to that Act as it applies to a compulsory acquisition of a right or the imposition of a restrictive covenant under article 23.

(4) Section 8(1) of the 1981 Act (vesting, and right to enter and take possession) is modified so as to secure—

- (a) that a general vesting declaration in respect of any right vests the right or the restrictive covenant in the acquiring authority on the vesting date; and
- (b) that, as from the vesting date, the acquiring authority have power, exercisable in the same circumstances and subject to the same conditions, to enter land for the purpose of exercising that right or enforcing the restrictive covenant as if the circumstances mentioned in section 8(1)(a) and (b) of the 1981 Act had arisen.

(5) Section 9(2) of the 1981 Act (right of entry under section 8(1) not exercisable in respect of land subject to certain tenancies, unless notice has been served on occupiers of the land) is modified so as to require a notice served by the appropriate authority under that provision to refer to the authority's intention to enter land specified in the notice in order to exercise the right or enforce that restrictive covenant.

(6) In section 10(1) of the 1981 Act (acquiring authority's liability on vesting of land), the reference to the acquiring authority's taking possession of the land under section 11(1) of the 1965 Act is to be read instead as a reference to the authority's exercising the power to enter the land under that provision as modified by paragraph 4(5) of this Schedule.

(7) Schedule A1 to the 1981 Act (counter-notice requiring purchase of land not in general vesting declaration) has effect as if—

- (a) in paragraph 1(1), for "part only of" there were substituted "only the acquisition of a right or the imposition of a restrictive covenant over";
- (b) references to the land proposed to be acquired were (subject to paragraph (d) below) to the right proposed to be acquired or to the restrictive covenant proposed to be imposed;
- (c) references to the additional land were to the house, building or factory over which the right is proposed to be exercisable or the restrictive covenant to be enforceable;
- (d) in paragraphs 14 and 15, references to the severance of the land proposed to be acquired were to the acquisition of the right or the imposition of the restrictive covenant; and
- (e) in paragraph 15, after "in addition to" there were inserted "or in substitution for".

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SCHEDULE 8

Article 26

Land of which only subsoil more than 9 metres beneath surface may be acquired

<i>(1)</i> Area	<i>(2)</i> Number of land shown on onshore plan
Isle of Anglesey	45, 46 and 47

SCHEDULE 9

Article 28

Land of which Temporary Possession may be taken

<i>(1)</i> Area	<i>(2)</i> Number of land shown on onshore plan	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Authorised work
Isle of Anglesey	2	Temporary working site, laydown and access for construction	Works No. 3 and 4
	4 and 6	Temporary working site, laydown and access for construction	Work No. 4
	7	Temporary working site, laydown and access for construction	Works No. 5, 6 and 7
	17 and 26	Temporary working site, laydown and access for construction	Work No. 7

SCHEDULE 10

Article 44

Provisions relating to Statutory Undertakers etc

Apparatus of statutory undertakers etc on land acquired

1.—(1) Sections 271 to 274(8) of the 1990 Act (power to extinguish rights of statutory undertakers etc and power of statutory undertakers etc to remove or re-site apparatus) apply in relation to any land acquired or appropriated by the undertaker under this Order subject to the following provisions of this paragraph: and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential

(8) Sections 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

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on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282,(9) which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by paragraph (1), references to the appropriate Minister are references to the Welsh Ministers.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus will be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by him, 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.

(4) Paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

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

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

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, will not have effect in relation to apparatus as respects which paragraph 2 or Part 3 of the 1991 Act applies.

(6) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(10); and

“public utility undertakers” has the same meaning as in the Highways Act 1980(11).

Apparatus of statutory undertakers etc in stopped up streets

2.—(1) Where a street is stopped up under article 8 (temporary stopping up of streets) any statutory utility whose apparatus is under, in, upon, along or across the street will have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 8 (temporary stopping up of streets) any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as aforesaid.

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

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

(9) Section 279(3) was amended by paragraphs 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by [S.I. 2009/1307](#).

(10) [2003 c. 21](#).

(11) The definition of “public utility undertakers” was amended by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act [1989 \(c. 15\)](#) and section 112(4) of, and Schedule 18 to, the Electricity Act [1989 \(c. 29\)](#).

- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.
- (4) If in the course of the execution of relocation works under paragraph (2)—
 - (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
 - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) will be reduced by the amount of that excess.
- (5) For the purposes of paragraph (4)—
 - (a) an extension of apparatus to a length greater than the length of existing apparatus is not treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
 - (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.
- (6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.
- (7) Paragraphs (3) to (6) do not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—
 - (a) the allowable costs of the relocation works will be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
 - (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.
- (8) In this paragraph—
 - “apparatus” has the same meaning as in Part 3 of the 1991 Act;
 - “relocation works” means work executed, or apparatus provided, under sub-paragraph (2); and
 - “statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a public communications provider as defined in paragraph 1(6)(12).

Railway and navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 7 (power to execute street works) of this Order to break up or open a street is not exercisable where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

(12) 2003 c. 21. (There are amendments to section 151(1) not relevant to this Order).

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- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

SCHEDULE 11

Article 45

Protective Provisions

PART 1

Protection of electricity, gas, water and sewerage undertakers

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

2. In this Part—

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

“apparatus”—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, means electric lines or electrical plant (as defined in the Electricity Act 1989(13)) belonging to or maintained by the utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, means any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term, means mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of water supply; and
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
 - (i) means—
 - (aa) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and

(13) 1989 c. 29.

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- (bb) any sewer that is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act⁽¹⁴⁾ or an agreement to adopt made under section 104 of that Act, and
 - (ii) includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,
and in each case includes any structure in which apparatus is or is to be lodged or that gives or will give access to apparatus;
“functions” includes powers and duties;
“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or on land;
“utility undertaker” means—
 - (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽¹⁵⁾;
 - (c) a water undertaker⁽¹⁶⁾; and
 - (d) a sewerage undertaker, for the area of the onshore works, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.
3. This Part does not apply to—
- (a) apparatus in respect of which relations between the undertaker and the utility undertaker are regulated by Part 3 of the 1991 Act; and
 - (b) the tidal works.
4. Despite any provision in this Order or anything shown on the onshore plan, the undertaker must not acquire any apparatus otherwise than by agreement.
- 5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.
- (2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed and of the proposed position of the alternative apparatus to be provided or constructed; and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3) afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.
- (3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice

⁽¹⁴⁾ Section 102(4) was amended by section 96 of the Water Act 2003. Section 104 was amended by section 96 of, and Part 3 of Schedule 9 to, the Water Act 2003 and by section 42(3) of the Flood and Water Management Act 2010 (c. 29).

⁽¹⁵⁾ 1986 c. 44. “Gas transporter” is defined in section 7. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000.

⁽¹⁶⁾ “Water undertaker” is defined in Schedule 1 to the Interpretation Act 1978.

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to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

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

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench), within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised project, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised project and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised project for which the alternative apparatus is to be substituted.

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

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise

for the protection of the apparatus, or for securing access to it; and the utility undertaker is entitled to watch and inspect the execution of the works.

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

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

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

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

8.—(1) Subject to the provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by the utility undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under this Part (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus, in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the inspection, superintendence and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the undertaker of any power under this Order; and
- (d) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any such power,

within a reasonable time of being notified by the utility undertaker that it has incurred such expenses.

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

(3) If in accordance with this Part—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which

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apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of subparagraph (1) must be reduced by the amount of that excess.

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

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

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

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works referred to in paragraph 5(2) any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided by the utility undertaker, the undertaker must—

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

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

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

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

PART 2

Protection of Network Rail Infrastructure Limited

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

12. In this Part—

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

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

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“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993⁽¹⁷⁾;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited that holds property for railway purposes, and for the purpose of this definition “associated company” means any company that is (within the meaning of section 1159 of the Companies Act 2006⁽¹⁸⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993⁽¹⁹⁾) or station lease;

“railway property” means any railway belonging to Network Rail and—

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

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

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

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

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

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

- (a) article 12 (*discharge of water*);
- (b) article 14 (*power to survey and investigate land*);
- (c) article 22 (*power to acquire land*);
- (d) article 23 (*power to acquire rights and impose restrictive covenants*);
- (e) article 26 (*power to acquire subsoil only*);
- (f) article 28 (*temporary use of land for construction of works*);

⁽¹⁷⁾ 1993 c. 43. Section 8 was amended by paragraph 4 of Schedule 17 and Part 4 of Schedule 31 to the Transport Act 2000 (c. 38), paragraphs 3 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c. 20) and paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to the Railways Act 2005 (c. 14).

⁽¹⁸⁾ 2006 c. 46.

⁽¹⁹⁾ “Access agreement” is defined in section 83.

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- (g) article 29 (*temporary use of land for maintenance of works*);
- (h) article 34 (*power to override easements and other rights*);
- (i) article 35 (*private rights over land*);
- (j) article 40 (*power to lop trees overhanging the authorised works and removal of hedgerows*);
- (k) article 44 and Schedule 10 to the Order (*statutory undertakers*); or
- (l) the powers conferred by section 11(3) of the 1965 Act,

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

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or Schedule 10 to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

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

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the day on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval, the undertaker may serve on the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the day on which the engineer receives written notice from the undertaker. If by the expiry of the further period of 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

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

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

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

16.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 15(4) must, when commenced, be constructed—

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

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

(3) Nothing in this Part imposes any liability on the undertaker with respect to—

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

17. The undertaker must—

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

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

19.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe and efficient operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail, and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs that may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

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(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail itself desires to construct that part of the specified work that in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any approval of the specified work under paragraph 15(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss that it may suffer by means of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 20(1) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

20. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 15(3) or in constructing any protective works under paragraph 15(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions that may, in the opinion of the engineer, be required to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services that may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

21.—(1) In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the onshore works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (2), the undertaker must in the design and construction of the authorised project take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus that may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to paragraph (a).

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

(6) If, at any time before commencement of regular operation of the onshore works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised project causes EMI, the undertaker must immediately on receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5) to Network Rail's apparatus).

(7) In the event of EMI having occurred—

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

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs must be carried out and completed by the undertaker in accordance with paragraph 16.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 25(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

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(10) For the purpose of paragraph 20(1) any modifications to Network Rail's apparatus under this paragraph is deemed to be protective works referred to in that sub-paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 49 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

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

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

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

25.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part that may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or its failure; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged on a specified work; and the undertaker must indemnify Network Rail and keep Network Rail indemnified from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under this Part.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand, and no settlement or compromise of such a claim or demand must be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums that Network Rail receives under sub-paragraph (1) that relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

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“relevant costs” means the costs, direct losses and expenses (including loss of revenue) incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work, or any such act or omission as mentioned in sub-paragraph (1);

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

26. Network Rail must, on receipt of a request from the undertaker, from time to time provide to the undertaker free of charge written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 25) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (including any claim relating to the relevant costs).

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

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

- (a) any railway property shown on the works plans and onshore plan and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property.

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

30. The undertaker must, no later than 28 days from the date that the plans are certified by the Welsh Ministers in accordance with article 46 (certification of plans etc.), provide to Network Rail a set of plans that relate to the specified works in the form of a computer disc with read-only memory.

PART 3

Protection of operators of electronic communications code networks

31.—(1) The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

“2003 Act” means the Communications Act 2003;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code⁽²⁰⁾;

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

(20) Paragraph 1(3A) was added to the code (Schedule 2 to the Telecommunications Act 1984) by paragraph 4 of Schedule 3 to the Communications Act 2003.

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“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽²¹⁾;

“electronic communications code network” means—

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

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

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

32. The temporary stopping up or diversion of any street under article 8 (temporary stopping up of streets) does not affect any right of the operator under paragraph 9 of the electronic communications code to maintain any apparatus that, at the time of the stopping up or diversion, is in that street.

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

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the project), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply;
- (c) make reasonable compensation to an operator for loss sustained by it; and
- (d) indemnify an operator against claims, demands, proceedings, costs, damages and expenses that may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Sub-paragraph (1) does not apply to—

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

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

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

(5) Any difference arising between the undertaker and the operator under this Part is to be referred to and settled by arbitration under article 49 (arbitration).

(21) “The electronic communications code” is defined in section 106(1).