

**WELSH MINISTERS**

**~~2020~~**

**2021**

**Transport and Works Act 1992**

**Transport and Works (Applications and Objections Procedure)  
(England and Wales) Rules 2006**

**THE MORLAIS DEMONSTRATION ZONE ORDER**

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**Explanatory Memorandum**

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**Rule 10(2)(b)**

1. This memorandum explains the purpose and effect of the draft Order as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006<sup>1</sup>.
2. The Application for the an order under the Transport and Works Act 1992 ("the Order") is made by Menter Môn Morlais Limited ("MM"), who will comprise the undertaker for the purposes of the Order. The Order would enable construction, operation, maintenance, repowering and decommissioning of a new offshore generating station with a gross output capacity of up to 240 megawatts comprising tidal devices and associated infrastructure offshore together with onshore cabling and connection to the existing electricity network ("the Project")
3. The Project comprises the installation and operation on a commercial scale of a number of arrays of tidal devices located in an offshore array area comprising 35km<sup>2</sup> off Holy Island, Anglesey. Power generated by the tidal devices may be collected in hubs and exported via export cables which will make landfall within the area known as Abraham's Bosom. Onshore works will comprise a landfall substation, a switchgear building at Parc Cybi, and cabling to connect and then export electricity to the grid at the existing connection at Orthios Eco Park to the west of Holyhead.
4. The purpose of the Project is to allow commercial operators to install and demonstrate their technologies on a commercial scale. As such it is necessary to allow an operator to remove its devices and for new technologies to be installed in the same or different locations. To facilitate the removal and installation of tidal devices flexibility for this 'repowering' is included within the draft Order but is subject to the offshore Order limits and project parameters as assessed through the Environmental Statement (as supplemented by further environmental information) which accompanies the application.
5. The Project does not fall within the definition of a Nationally Significant Infrastructure Project pursuant to the Planning Act 2008 as, from 1 April 2019, the power to consent electricity generating stations both onshore and offshore in Wales under 350MW was removed from the Planning Act 2008 and devolved to the Welsh Ministers. Further, the Welsh regime for consenting Developments of National Significance does not apply offshore.
6. The works to construct and maintain the proposed generating station will interfere with rights of navigation in waters within or adjacent to Wales up to the seaward limits of the territorial sea. Section 3(1)(b) of the Transport and Works Act 1992 ("TWA") empowers the Welsh Ministers to make an order relating to the carrying out of such works if they are of a description prescribed by Order. The Project comprises the construction of an offshore

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<sup>1</sup> S.I. 2006/1466.

installation and utilities structures as prescribed by the Transport and Works (Description of Works Interfering with Rights of Navigation) Order 1992.

7. Section 5 of the TWA also allows an order to apply modify or exclude any statutory provision which relates to any matter as to which an order could be made under sections 1 or 3. As such the consenting of the proposals through a Transport and Works Act Order (TWAO) will also allow the New Roads and Street Works Act 1991 to be applied so as to allow works to be carried out in 'streets' as defined in that Act, and to stop up and divert streets in order for these works to be carried out. A TWAO may also grant powers for compulsory acquisition and interference with private rights which are necessary for the construction operation and maintenance of the proposals. The application for the Order seeks authorisation for such powers.
8. An application for an order under the TWA may also be accompanied by an application for deemed planning permission which is necessary for the onshore elements of the Project. Such an application accompanies the application for this Order.
9. Whilst a separate application will still be required to be made for a marine licence, the TWA otherwise provides a single mechanism for the consenting of the Project whilst also allowing the degree of flexibility required by the nature of the Project as a demonstration zone. This consenting regime therefore presents significant benefits over the alternative mechanism of an application for consent under the Electricity Act 1989, which at present has no defined statutory process in Wales. This mechanism would also require a separate procedure to be followed to authorise compulsory purchase of land required to deliver the Project since those powers under the Electricity Act 1989 have not been devolved to Welsh Ministers.
10. The Order is based on the model clauses prescribed pursuant to section 8 of the Transport and Works Act 1992, but as these primarily relate to onshore linear rail and tram projects, the Order draws from and reflects the drafting used in previous orders for offshore generating stations made under the TWA and development consent orders made in respect of offshore generating stations pursuant to the Planning Act 2008. It also includes power to operate the Project after construction.
11. The land subject of the draft Order comprises the land required to deliver the electricity generating station both on- and off- shore. The Crown has granted a leasehold interest in the area where the technologies will be deployed offshore (within Work No 1) and MM has an associated right to lay cables from this area to landfall. Onshore, wherever possible, the export cables are proposed to be located in the adopted highway. The Order seeks compulsory purchase powers to acquire a number of land interests in third party ownership for the delivery and ongoing operation and maintenance of the onshore works and powers of temporary possession to enable the works to be carried out.

12. A more detailed description of the proposal is set out in Chapter 4 of the Environmental Statement and the background to the proposals is provided in the Statement of Aims accompanying the application for the Order.
13. An application for a direction for deemed planning permission pursuant to section 90(2A) of the Town and Country Planning Act 1990 in respect of the onshore works accompanies the application for the Order. An application for a marine licence under Part 4 of the Marine and Coastal Access Act 2009 is also submitted to Natural Resources Body for Wales as the appropriate licensing authority for the offshore works.

#### **The Undertaker**

14. MM is a special purpose vehicle established by Menter Môn Cyf (MMC) to deliver the Project. MMC is a social enterprise established since 1995 to work with communities and government to deliver innovative solutions on behalf of those bodies. It is a not for profit company and its aim is to maximize benefits for the communities it works in. As such it proposes to bring forward the Project to promote the generation of renewable energy for Wales creating jobs for local people, and to further support the economic development and growth of the Isle of Anglesey area.
15. MM will secure consent for the proposals and construct and maintain the electricity export cables and the onshore works so as to provide common infrastructure for the connection of tidal devices installed offshore to connect and export energy to the electricity network. It is proposed to grant leases of parts of the offshore array area to operators of marine energy technology to enable them to install and demonstrate tidal devices and associated collector hubs on a commercial scale offshore (Work No 1). Export cables will connect to the landfall infrastructure (Work No 2), across the intertidal area and into the onshore works (Works No 3-9 and the further works detailed in Chapter 2 of Part 2 to Schedule 1). When each such lease of part of the demonstration zone comes to an end the operator will remove their infrastructure and a new lease may be granted over the same or an alternative part of the offshore area for the deployment of an alternative tidal energy technology (repowering).
16. MM is securing funding for the proposals from the Welsh European Funding Office and other sources.

### **PART 1**

#### **PRELIMINARY**

17. **Article 1** (*Citation and commencement*) provides for the citation and commencement of the Order.
18. **Article 2** (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order. Of particular note are the definitions of 'maintain' and 'repowering'

- 18.1 The definition of maintain includes both the maintenance of the whole of the works which are the subject of the Order but also any parts thereof. In relation to constituent parts the term includes refurbishment, removal and replacement.
- 18.2 The definition of repowering includes the replacement of a tidal work following the removal of the former infrastructure. Replacement may be in the same or different location and may involve the same or different type of tidal device. Repowering has been considered in the Environmental Statement which sets out the project parameters which apply to repowering activities. This is necessary to accommodate different operators who may require array areas of different sizes to install and demonstrate their technologies.

## PART 2

### WORKS PROVISIONS

19. **Article 3** (*Power to construct maintain repower and decommission the works*) authorises the construction, maintenance and decommissioning of the proposed onshore works and the construction, maintenance, repowering and decommissioning of the tidal works comprising the offshore generating station. The works are described in Schedule 1 to the Order and shown on the plans and sections deposited in connection with the application. Article 3(3) provides a specific power to repower the tidal works or any parts thereof within the offshore Order limits. Articles 3(4) and (6) secure that the construction maintenance and any repowering of the tidal works will be carried out within the project parameters which have been assessed in the Environmental Statement which accompanies the application, and in accordance with details approved by the Welsh Ministers in advance of specified activities taking place, as set out in Part 4 of Schedule 1. This secures the implementation of mitigation measures set out in Chapter 27 of the Environmental Statement. The Isle of Anglesey County Council will be consulted in respect of any proposals to install surface emergent infrastructure within the array area pursuant to article 3(5) to enable to comment on the visual impact of any visually prominent devices on the Anglesey Area of Outstanding Natural Beauty and its Heritage Coast detailed within the device deployment protocol submitted pursuant to Article 3(4). In addition both Trinity House and the Maritime and Coastguard Agency will be consulted in respect elements of the project that affect navigation in the marine environment. As a marine licence will also be required for the offshore works which will impose conditions related to the detailed content of the documents in Part 4 of Schedule 1, article 3(7) provides that approval under the marine licence, which will be granted by Natural Resources Wales, is deemed approval of the same document by Welsh Ministers for purposes of article 3. Article 3(4) ensures consistency between the equivalent documentation submitted under this article and any marine licence. Article 3(8) confirms that the Energy Act 2004 applies to the project and secures the submission of a decommissioning programme to the Secretary of State before the commencement of any tidal works if so required. This is in addition to the submission of the decommissioning programme required to be submitted and approved pursuant to Part 4 of Schedule 1 prior to the decommissioning taking place.

20. **Article 4** (*Power to deviate*) provides for limits within the undertaker can deviate in the construction and maintenance of cabling to connect the tidal works to the existing electricity network including in relation to the area of cabling to be installed by horizontal directional drilling under the A55 and North Wales Coast Line railway line. It also ensures that non-linear works are constructed only within the land identified for this purpose in Part 2 of Schedule 1. This relates solely to the onshore works, as the offshore tidal works are defined by reference to a project envelope within which the tidal works must be located and the export cables to landfall laid.
21. **Article 5** (*Power to operate*) provides an express power to operate the scheduled works once constructed.
22. **Article 6** (*Benefit of the Order*) (1) allows the undertaker to transfer its rights to construct maintain use or operate the authorised works (or any parts thereof) to another person with the consent of the Welsh Ministers. Article 6(2) allows the undertaker to grant a lease for the construction maintenance operation and repowering of the tidal works comprising Work No 1 or part thereof without the requirement to secure the consent of the Welsh Ministers. Those works are still subject to the project parameters and will also be subject to the terms of any marine licence granted for those tidal works
23. **Article 7** (*Power to execute street works*) confers authority on the undertaker to interfere with, and execute works in or under, specified streets within the onshore Order limits.
24. **Article 8** (*Temporary stopping up of streets*) provides for the temporary stopping up of streets. Where the street is specified in Schedule 4, the undertaker must consult the relevant street authority. If the undertaker wishes temporarily to stop up streets which are not so specified in Schedule 4, it will need to obtain the consent of the relevant street authority. A street authority which fails to respond to an application for consent within 56 days of the application being made is deemed to have given its consent.
25. **Article 9** (*Access to works*) confers the power to form and lay out means of access or to improve means of access as identified on the onshore plans and in Schedule 5. If the undertaker wishes to form and lay out or improve other means or access at other locations within the onshore Order limits it will need to obtain the consent of the highway authority, such approval not to be unreasonably withheld.
26. **Article 10** (*Agreements with street authorities*) authorises the undertaker to enter into agreements with street authorities relating to the construction of new streets, works in or affecting streets and the stopping up, alteration and diversion of streets. This replicates the protection provided to street authorities in the New Roads and Street Works Act 1991.
27. **Article 11** (*Use of private roads for construction*) authorises the undertaker to use any private road in connection with the construction of the authorised works. The undertaker

must compensate the person liable for the repair of a private road for any loss or damage suffered as a result of the undertaker using the private road for construction.

28. **Article 12** (*Discharge of water*) enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the proposed works with the approval of the person to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. A relevant person who fails to respond to an application for consent within 56 days of the application being made is deemed to have given its consent.
29. **Article 13** (*Protective works to buildings*) permits the undertaker to carry out certain protective works before, during or after construction of the authorised works (up to a period of 5 years after that part of the authorised works is first opened for use) to buildings within the onshore Order limits shown on the onshore plan and which may be affected by the works. Provision is made for certain restrictions and the payment of compensation.
30. **Article 14** (*Power to survey and investigate land*) confers upon the undertaker (subject to giving notice to every owner and occupier of that land) power to survey and investigate land within the onshore Order limits or which may be affected by the authorised works and to make trial holes, carry out ecological or archaeological investigations and place on, leave on and remove apparatus. Provision is made for the payment of compensation. Approval (which may not be unreasonably withheld) for the making of trial holes is required in the case of a carriageway or footway from the highway authority, or in the case of a private street, from the street authority and is deemed granted if no response is given within 56 days.
31. Article 14(5) enables a person who is prevented from entering land to carry out surveys and investigations under article 14 to apply to a justice of the peace for a warrant authorising the use of force. The warrant can only be issued if the Justice is satisfied that is reasonable to use force in the exercise of the power and the force authorised by the warrant is limited to what is reasonably necessary. Article 14(6) to (8) provides other safeguards. Article 14(6) to (10) is based on section 173 of the Housing and Planning Act 2016 and has been used in the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018.
32. **Article 15** (*Saving for Marine and Coastal Access Act 2009*) requires the undertaker to secure a marine licence for any tidal works to be constructed maintained or repowered to the extent that such works are licensable marine activities. Natural Resources Wales will be required to determine any such application(s) in accordance with the statutory requirements of that regime
33. **Article 16** (*Power to dredge*) enables the undertaker to dredge and dispose of dredged materials. Any disposal of dredged material will be subject to conditions approved or prescribed by Natural Resources Wales

34. **Article 17** (*Provision against danger to navigation*) ensures that in the event that there is a danger to navigation (excluding the exposure of cables) arising from the Project or its construction the undertaker is empowered to take action to prevent any further danger and provides for Trinity House, Natural Resources Wales, the Maritime and Coastguard Agency and, the United Kingdom Hydrographic Office and the Kingfisher Information Service of Seafish to be notified within 24 hours of the undertaker becoming aware of the danger. Where cables are exposed the undertaker must notify mariners within three days and provide copies of the notice to Natural Resources Wales, the Maritime and Coastguard Agency, Trinity House, and the United Kingdom Hydrographic Office within five days.
35. **Article 18** (*Abatement of tidal works abandoned or destroyed*) provides for the Welsh Ministers to require the undertaker to repair or restore at its own expense any tidal works abandoned or suffered to fall into decay, and which includes any works consisting partly of works on or over the land above the level of high water which may interfere with the right of navigation of other public rights over the foreshore. By virtue of article 6 this will apply to any lessees in respect of their devices
36. **Article 19** (*Survey of tidal works*) allows the Welsh Ministers to order a survey at the undertaker's expense of a tidal work or of land on which a tidal work is proposed be constructed.
37. **Article 20** (*Lights on tidal works*) requires the undertaker to exhibit lights between sunset and sunrise on any tidal work or on any plant or equipment in the seaward construction area during construction and to exhibit lights at the outer extremity of each tidal work once it is complete.
38. **Article 21** (*Safety of navigation*) requires the undertaker to secure approval to a scheme to secure safety of navigation by the Welsh Ministers in consultation with other interested parties before those rights of navigation are interfered with. The scheme must accord with guidance issued by the Maritime and Coastguard Agency.

### PART 3

#### ACQUISITION OF LAND

39. **Article 22** (*Power to acquire land*) confers on the undertaker powers of compulsory acquisition of land within the limits of deviation and identified on the deposited plans and described in the book of reference, for or in connection with the authorised work. It also authorises the compulsory acquisition of land specified in Schedule 2 for the purpose specified in that Schedule.
40. **Article 23** (*Power to acquire new rights and impose restrictive covenants*) makes ancillary provision in respect of compulsory purchase where rights over land are required or the power to impose restrictive covenants is needed. In the case of the land specified in the table in Part 1 of Schedule 6 to the Order, only rights may be acquired over that land for



the purpose specified in that Part of the Schedule. In the case of the land specified in the table in Part 2 of Schedule 6, the undertaker may impose restrictive covenants over that land. The land included in the table in Part 2 of Schedule 6 is limited to land in which underground electricity cables are authorised to be installed under the provisions of the Order. The power to impose restrictive covenants over this land is therefore required so that the undertaker can ensure those cables can be protected in the future through the exercise of the power. Schedule 7 makes modifications of relevant enactments concerning compensation and compulsory acquisition in relation to the acquisition of a right or the imposition of a restrictive covenant under article 23. The modifications reflect the changes to the law relating to compulsory acquisition made by Part 7 of the Housing and Planning Act 2016 and are based on those in Schedule 6 to the High Speed Rail (London – West Midlands) Act 2017, read with Schedule 14 to that Act and have been applied in previous Transport and Works Act orders such as The Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018.

41. **Article 24** (*Application of Part 1 of the Compulsory Purchase Act 1965*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965<sup>2</sup> to the acquisition of land under the Order as if it were a compulsory purchase Order for the purposes of the Acquisition of Land Act 1981. The modifications reflect the changes to the law relating to compulsory acquisition made by Part 7 of the Housing and Planning Act 2016 and are based on those in Schedule 6 to the High Speed Rail (London – West Midlands) Act 2017, read with Schedule 14 to that Act, and have been applied in previous Transport and Works Act orders such as The Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018.
42. **Article 25** (*Application of the 1981 Act*) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>3</sup> and provides for that Act to have effect subject to certain modifications. It gives the undertaker the option to acquire land by this method rather than through the notice to treat procedure. The modifications reflect the changes to the law relating to compulsory acquisition made by Part 7 of the Housing and Planning Act 2016 and are based on those in Schedule 6 to the High Speed Rail (London – West Midlands) Act 2017, read with Schedule 14 to that Act, and have been applied in previous Transport and Works Act orders such as The Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018.
43. **Article 26** (*Power to acquire subsoil only*) provides that the subsoil to the land within the onshore Order limits may be acquired under article 26 instead of the whole of the land. In respect of the land specified on Schedule 8 to the Order, the power of compulsory acquisition is restricted to land lying more than 9 metres below the surface of the land. In

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<sup>2</sup> 1965 c.56.

<sup>3</sup> 1981 c.66.

common with enactments such as the High Speed Rail (London-West Midlands) Act 2017, the provisions relating to the service of material detriment counter notices pursuant to either Schedule 2A of the Compulsory Purchase Act 1965 or Schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981 (as appropriate) are excluded in the event of the acquisition of the subsoil only to land.

44. **Article 27** (*Rights under or over streets*) permits the undertaker to appropriate and use a street within the limits of deviation for the authorised works and the limits of land to be acquired or used without being required to acquire any part of the street or any easement or right in it. Provision is made for the payment of compensation.
45. **Article 28** (*Temporary use of Land for Construction of Works*) enables the undertaker, in connection with the carrying out of the authorised works, to take temporary possession of (i) the land included in Schedule 9 to the Order, and (ii) any other land within the scope of paragraph (1)(a)(ii) of article 28 which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. Paragraph (1)(a)(ii) allows flexibility in that following detailed design of the works, only temporary occupation rather than permanent acquisition of land can be taken if that is all that is required; this follows the approach adopted in a number of recent Transport and Works Act orders such as The Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018. Provision is also made for compensation.
46. **Article 29** (*Temporary use of land for maintenance of works*) provides that the undertaker may take temporary possession of land within the onshore Order limits reasonably required for the purpose of maintaining the authorised development and to construct such temporary works and buildings on the land as may be reasonably necessary for that purpose during a period of five years from the date on which that part of the authorised development is first opened for use. Provision is also made for compensation.
47. **Article 30** (*Incorporation of the Mineral Code*) provides for the incorporation of Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act (minerals).
48. **Article 31** (*Protection of rights to fish*) provides for compensation to be payable where a proprietary right to fish is injuriously affected by the construction operation or maintenance of the authorised works including repowering.
49. **Article 32** (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal must disregard any interest in land or any enhancement of an interest in land caused by improvements which it is satisfied were created or undertaken with a view to obtaining compensation or increased compensation.
50. **Article 33** (*Set-off for enhancement in value of retained land*) provides that, in assessing the compensation payable to any person in respect of the acquisition of any land or new

rights over land, the Upper Tribunal must set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

51. **Article 34** (*Power to override easements and other rights*) allows the undertaker to override private rights in the carrying out of authorised activities as required in connection with the authorised works. Provision is made for the payment of compensation.
52. **Article 35** (*Private rights over land*) provides for the extinguishment of private rights over land subject to compulsory acquisition, and the suspension of private rights in respect of land temporarily occupied. Provision is made for the payment of compensation.
53. **Article 36** (*Time limit for exercise of powers of acquisition*) imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land and the temporary occupation of land under article 28 (temporary use of land for construction of works).
54. **Article 37** (*Disapplication of legislative provisions*) disapplies both the provisions of section 36 of the Electricity Act 1989 and section 23 of the Land Drainage Act 1991.
55. **Article 38** (*Defence to proceedings in respect of statutory nuisance*) provides undertaker with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990<sup>4</sup> if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 of the Control of Pollution Act 1974<sup>5</sup>, or that the nuisance complained of is a consequence of the operation of the works authorised by the Order and that it cannot reasonably be avoided.
56. **Article 39** (*Planning permission and supplementary matters*) enables the undertaker carry out any of the authorised works as affect protected trees as if planning permission deemed pursuant to section 90(2A) was granted subject to an application under Part 3 of the 1990 Act. Article 39(3) also modifies planning legislation in relation to the treatment of land as operational land which is subject to a direction as to deemed planning permission pursuant to section 90(2A) of the Town and Country Planning Act 1990
57. **Article 40** (*Power to lop trees overhanging the authorised works*) enables the undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised development. Provision is included for the payment of compensation for loss and damage.

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<sup>4</sup> 1990 c.43.

<sup>5</sup> 1974 c.40.

58. **Article 41** (*Application of landlord and tenant law*) overrides the application of landlord and tenant law insofar as it may prejudice agreements for the operation etc, of the authorised works.
59. **Article 42** (*Obstruction of construction of authorised works*) makes it a criminal offence without reasonable cause to obstruct the construction of the authorised works and to interfere with the undertaker's apparatus
60. **Article 43** (*Safety zones for navigation, trawling and anchoring*) provides for the process in the Energy Act 2004 to apply to the declaration of safety zones in respect of the construction, operation, maintenance, operating, repowering and decommissioning of tidal works. Any application made by the undertaker for a safety zone must be accompanied by an updated navigational risk assessment.
61. **Article 44** (*Statutory Undertakers and protective provisions etc*) introduces Schedule 10 to the Order which contains specific safeguards for statutory undertakers
62. **Article 45** (*Protection of interests*) introduces Schedule 11 to the Order which provides protection for electricity, gas, water and sewerage undertakers, Network Rail Infrastructure Limited and telecommunications operators in the exercise by the undertaker of the powers conferred under the Order
63. **Article 46** (*Certification of plans etc*) requires the undertaker to submit the environmental statement, the book of reference, the offshore works plans, onshore plans, [the outline marine biodiversity enhancement strategy](#), the sections and the restricted area plan to the Welsh Ministers for certification after the making of this Order.
64. **Article 47** (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the Order.
65. **Article 48** (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or rule of law.
66. **Article 49** (*Arbitration*) makes provision for differences arising under any provision of the Order to be determined by arbitration. Determinations by the Welsh Ministers or matters or which are subject to the direction making powers of Trinity House, are excluded from the operation of this article.
67. **Article 50** (*Saving for Trinity House*) provides that nothing in the Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.
68. **Article 51** (*Neighbourhood Planning Act 2017*) provides that the provisions in Chapter 1 of Part 2 of the Neighbourhood Planning Act which relate to temporary possession are not to apply as regards the Order. At present it is not known when the provisions in Chapter 1 of Part 2 of this Act and the regulations to be made under them, will come into force. In

addition it is not yet known what effect (if any) those regulations will have on the provisions of the Order since they are not yet available. Article 51 removes this uncertainty allowing the application for this Order to be made on the basis of the existing law.

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## SCHEDULES

~~70-69.~~ **Schedule 1 Part 1** (*Authorised works*) describes the main work authorised to be constructed under article 3 of the Order. It comprises the onshore elements and the onshore linear works including intertidal works. The offshore works comprising Works No 1 and 2 are described by reference to the maximum number of tidal devices collector hubs and export cables which have been assessed in the Environmental Statement to ensure that their impact has been assessed and any mitigation required appropriately secured. The intertidal works and onshore cable route are to be fixed (subject to the limits of deviation) save that maximum numbers of cables and other items of infrastructure are specified as this may depend on the number of arrays constructed and operational. These elements will still need to demonstrate compliance with the project parameters

~~71-70.~~ In respect of Work Nos 3 and 4 two alternatives are provided for the provision of a cable route from landfall to the landfall substation; both options are assessed in the Environmental Statement.

~~72-71.~~ Schedule 1 Part 2 identifies the further works required in order to be able to construct operate repair and maintain the authorised works both onshore and offshore, including the repowering of any tidal works comprising an array for the offshore works. Chapter 1 comprises ancillary works and Chapter 2 comprises the non-linear elements of the onshore works, namely the electricity substation close to where the cables make landfall, the switchgear infrastructure and the works to connect the project to the existing electricity network.

~~73-72.~~ Schedule 1 Part 3 identifies the array area within which the arrays and tidal devices may be constructed and operated, maintained and repowered. It also identifies the outermost extents of the export cable corridor to connect the arrays to the landfall location. These areas are defined by their outermost reaches as the type and number of arrays and tidal devices, and associated cables, may change over time as different operators occupy parts of the area for the purpose of deploying their technology and in recognition that the technologies will evolve over time. The deployment of arrays devices and cables within this area is controlled by the project parameters which have been assessed in the Environmental Statement. Part 3 also identifies the coordinates for those parts of the array area where the deployment of tidal devices with particular characteristics may be restricted.

~~74-73.~~ Schedule 1 Part 4 identifies those documents which must be submitted to the Welsh Ministers for approval prior to specified actions being undertaken, and must thereafter be

complied with. This provides a mechanism to ensure that the authorised works are within the project parameters relating to the offshore works and the extent of likely significant effects remains as established by the Environmental Statement

[~~75-74.~~](#) **Schedule 2** (*Acquisition of certain lands for ancillary works*) sets out the land outside of the limits of deviation on which the ancillary works authorised by article 3 may be carried out and which is subject to the powers of compulsory acquisition conferred under article 22(1)(b) for the purpose specified in relation to the land in column (3) of the table in the Schedule.

[~~76-75.~~](#) **Schedule 3** (*Streets subject to street works*) provides a table of the streets which are subject to street works for the Project under the Order.

[~~77-76.~~](#) **Schedule 4** (*Streets to be temporarily stopped up*) lists the streets which the undertaker may temporarily stop up alter or divert under article 8 of the Order. The undertaker must consult the relevant street authority before exercising the powers conferred under article 8 in relation to the streets listed in Schedule 4.

[~~78-77.~~](#) **Schedule 5** (*Access to works*) provides a table of streets which are required for access routes to works under the Order.

[~~79-78.~~](#) **Schedule 6** (*Land in which only new rights may be acquired and land over which restrictive covenants may be imposed*) sets out the land over which the undertaker's powers of compulsory acquisition under the Order are limited to the acquisition of rights and the imposition of restrictive covenants only in the land. The purposes for which rights may be acquired and the restrictive covenants may be imposed in respect of the land are specified in column (3) of the table in Schedule 6.

[~~80-79.~~](#) **Schedule 7** (*Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights and the Imposition of Restrictive Covenants*) sets out the modifications made to relevant enactments concerning compensation and compulsory acquisition in relation to the acquisition of rights and the imposition of restrictive covenants.

[~~81-80.~~](#) **Schedule 8** (*Land of which only Subsoil more than 9 metres beneath surface may be Acquired*) identifies land of which only subsoil more than 9 metres beneath the surface is to be acquired

[~~82-81.~~](#) **Schedule 9** (*Land of which Temporary Possession may be taken*) sets out the land of which the undertaker may take temporary possession under article 28) of the Order.

[~~83-82.~~](#) **Schedule 10** (*Provisions relating to Statutory Undertakers*) confers protection upon statutory undertakers.

~~84.83.~~ **Schedule 11** (*Protective Provisions*) provides gas, water and sewerage undertakers, Network Rail Infrastructure Limited and operators of electronic communications code networks with protective provisions under the Order.

WELSH MINISTERS

~~2020~~2021

Rule 10(2)(b)

Transport and Works Act 1992

Transport and Works (Applications and  
Objections Procedure) (England and Wales)  
Rules 2006

**THE MORLAIS DEMONSTRATION  
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**Explanatory Memorandum**

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