
W E L S H S T A T U T O R Y
I N S T R U M E N T S

20XX No. (W.)

XXXX No.

**MORLAIS DEMONSTRATION
ZONE ORDER**

**TRANSPORT AND WORKS, ENGLAND
AND WALES**

Made - - ***

Coming into force- - ***

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An application has been made to the Welsh Ministers in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(1) for an Order under sections 43 and 5 of the Transport and Works Act 1992(2) ("the 1992 Act").

~~{Objections to that application have been withdrawn.}~~

~~{The Welsh Ministers caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.}~~

The Welsh Ministers, having considered the [objections made and not withdrawn] [and] [the report of the person who held the inquiry], [has determined to make an Order giving effect to the proposals comprised in the application [without modifications] or [with modifications which in the opinion of the Welsh Ministers do not make any substantial change in the proposals] [with modifications which in the opinion of the Welsh Ministers make a substantial change in the proposals].]

[The Welsh Ministers having considered representations duly made under section 13 of the 1992 Act, has determined to make the Order applied for with modifications.]

Notice of the Welsh Ministers determination was published in the London Gazette on [].

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 43 and 5 of, and paragraphs 3, 4, 5, 7, 11 and 16 of Schedule 1 to, the 1992 Act, now exercisable by them(3) makes the following Order.

PART 1

Preliminary

Citation and Commencement

1. This Order may be cited as the Morlais Demonstration Zone Order and comes into force on [].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(4);

“the 1965 Act” means the Compulsory Purchase Act 1965(5);

“the 1980 Act” means the Highways Act 1980(6);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(7);

“the 1990 Act” means the Town and Country Planning Act 1990(8);

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- (1) SJ. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.
- (2) 1992 c. 42; section 43 was amended by paragraphs 51 and 5253 of Schedule 2 to the Planning Act 2008 (c. 29), section 5 was amended by S.I. 2012/1659.
- (3) Powers under sections 43 and 5 of, and paragraphs 3, 4, 5, 7, 8, 11 and 16 of Schedule 1 to the 1992 Act are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by virtue of article 2 and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (SJ. 1999/672). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), they were transferred to the Welsh Ministers.
- (4) 1961 c. 33.
- (5) 1965 c. 56.
- (6) 1980 c. 66.
- (7) 1981 c. 66.
- (8) 1990 c. 8.

“the 1991 Act” means the New Roads and Street Works Act 1991(1);

“the 2004 Act” means the Energy Act 2004 (2);

“the 2009 Act” means the Marine and Coastal Access Act 2009(3);

“the 2007 Regulations” means the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (4);

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

“array area” means that part of the offshore Order limits established as the array area in Part 3 of Schedule 1 within which Work No.1 may be constructed, operated, maintained, repowered and decommissioned;

“authorised works” means the scheduled works identified at Part 1 of Schedule 1 and any other works authorised by this Order including the further works identified at Part 2 of Schedule 1;

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

“the book of reference” means the book of reference certified by the Welsh Ministers as the book of reference for the purposes of this Order;

“cable protection” means protection of any cables forming part of the authorised works and may include rock bags, concrete mattresses, boulder replacement over open cut trenches and a conduit or duct which may comprise a J tube or similar split pipe protection

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

“commence” means begin to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised works either onshore or offshore other than operations consisting of demolition work, investigations for the purpose of assessing ground or seabed conditions, archaeological investigations, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements; and “commencement” must be construed accordingly;

“communication cables” means telephone cables and/or fibre optic cables for the transmission of electronic communications;

“decommissioning” means the decommissioning of the authorised works (or any part of them) at the end of their operational life but shall not include repowering;

“detailed marine biodiversity enhancement strategy” means a marine biodiversity enhancement strategy which accords with the outline marine biodiversity enhancement strategy and which describes any proposed biodiversity enhancement measures to be delivered as part of the construction or repowering of tidal devices, operational hubs, or installation of cables to which it relates;

“device deployment protocol” means a statement identifying (a) in respect of surface emergent tidal devices and operational hubs in the restricted areas and the remainder of the array area details including dimensions of the tidal device or operational hubs that the undertaker proposes to construct or repower and an updated seascape, landscape and visual assessment undertaken in accordance with the assessment methodology for the environmental statement or any subsequently published best practice guidance of those proposed tidal devices or operational hubs which shall include an assessment of the cumulative impact of the proposed tidal devices and hubs operational and/or consented (pursuant to an approved device deployment protocol) at the time of its preparation and/or (b) in respect of subsurface tidal devices or operational hubs in the restricted area – UKC 8m with a proposed under keel clearance of less than 8m details of the tidal device or operational hub to be deployed and/or (c) in respect of subsurface tidal devices or operational hubs in the restricted area UKC 20m with a proposed under keel clearance of less than 20m details of the tidal device or operational hub to be deployed, and in each case shall be consistent with the updated navigational risk assessment for the relevant tidal work;

“EIA Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 as amended by the Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 on the assessment of the effects of certain public and private projects on the environment(5);

(1) 1991 c. 22.
(2) 2004 c.20
(3) 2009 c. 23.
(4) SI 2007/1948, amended (in relation to Wales) by SI 2019/293

“electronic transmission” means a communication transmitted—

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

“environmental statement” means the environmental statement submitted with the application for this Order as supplemented and amended by the further environmental information submitted in support of the application and certified together as the environmental statement by the Welsh Ministers for the purposes of this Order;

“equivalent document” means a document listed in column 1 of Part 4 of Schedule 1 the content of which is also the subject of a condition on any marine licence granted for tidal works;

“european site” means a European site as defined in Regulation 8 of the Conservation of Habitats and Species Regulations 2017(1);

“export cable corridor” means that part of the offshore Order limits established as the export cable corridor in Part 3 of Schedule 1;

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

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

“the limits of deviation” means the limits of deviation for the onshore works shown on the onshore plans;

“limits of land to be acquired or used” means the land shown on the onshore plans;

“maintain” includes inspect, repair, refurbish, replace, adjust, alter and also includes, in respect of a constituent part of a work but not the whole of a work, remove, clear, refurbish, reconstruct, demolish, replace and improve any part of the authorised works, but does not include any activity (other than an activity authorised by or under this Order) that is within a class listed in Annex I to the EIA Directive or in a class listed in Annex II to the EIA Directive and, by nature of its size or location, likely to have significant effects on the environment and which has not been considered and assessed in the environmental statement and “maintenance” must be construed accordingly;

“MW” means megawatts;

“Natural Resources Wales” means the Natural Resources Body for Wales;

“offshore Order limits” means the limits within which the tidal works may be constructed, operated, maintained, repowered and decommissioned shown on the offshore works plans;

“offshore works plans” means in relation to the tidal works the plans prepared in pursuance of rule 12(1)(a) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and certified by the Welsh Ministers as the offshore works plans for the purposes of this Order;

“onshore Order limits” means the limits of deviation and the limits of land to be acquired or used for the onshore works as shown on the onshore plans;

“onshore plans” means the plans prepared in pursuance of both rule 12(1)(a) and rule 12(5) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and certified by the Welsh Ministers as the onshore plans for the purposes of this Order;

“onshore works” means so much of the authorised works as lies landward of mean low water springs;

“operational hub” means a hub for the collection and aggregation of electricity generated from a number of tidal devices comprising part of Work No 1;

“outline marine biodiversity enhancement strategy” means the document certified as the outline marine biodiversity enhancement strategy by the Welsh Ministers for the purposes of this order or any updated or amended outline marine biodiversity enhancement strategy as may either be approved by the Welsh Ministers or by Natural Resources Wales in accordance with the terms of any marine licence that may be granted for the tidal works;

“owner” in relation to land, has the same meaning as in the Acquisition of Land Act 1981(2);

(1) S.I. 2017/1012.

(2) 1981 c. 67. The definition of “owner” as amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

“project parameters” means the parameters for the authorised works as set out in tables 4-21 to 4-30 of the updated chapter 4 of updated environmental information forming part of the environmental statement and carrying document reference MOR-RHDHV-DOC-0004 version F:0 dated October 2019;

“repower” means the replacement of an existing tidal device with a different tidal device in the same or different location which may include the—

- (a) removal of tidal devices, associated hubs, inter-array cables and monitoring equipment comprising that part of Work No.1 being repowered; and
- (b) the construction of new tidal devices, associated hubs, inter-array cables and monitoring equipment and other authorised works with Work No.1 together with any related works identified in Part 2 of Schedule 1;

but does not include any activity (other than an activity authorised by or under this Order) that is within a class listed in Annex 1 to the EIA Directive or in a class listed in Annex II to the EIA Directive and, by nature if its size or location, likely to have significant effects of the environment and which has not been considered and assessed in the environmental statement and “repowered” must be construed accordingly;

“restricted area plan” means the plan marked ‘Restricted Area Plan’ and carrying reference MORMSDRW0001 and certified by the Welsh Ministers as the restricted area plan for the purposes of this order;

“restricted area – northern” means that part of the array area established as the restricted area – northern, in Part 3 of Schedule 1 and shown shaded gold on the Restricted Area Plan;

“restricted area – UKC 8m” means that part of the array area established as the restricted area UKC 8m in Part 3 of Schedule 1 and shown shaded blue on the Restricted Area Plan;

“restricted area – UKC 20m” means that part of the area established as the restricted area - UKC 20m in Part 3 of Schedule 1 and shown shaded purple on the Restricted Area Plan;

“restricted areas” means the restricted area – northern the restricted area – UKC 8m and the restricted area – UKC 20m;

“the Secretary of State” means the Secretary of State for Business Energy and Industrial Strategy or its successor in function with powers to secure the decommissioning of offshore renewable energy installations pursuant to the 2004 Act;

“the sections” means the sections prepared in pursuance of rule 12(3) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and certified by the Welsh Ministers as the sections for the purposes of this Order;

“street” includes part of a street;

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

“tidal device” means a discrete tidal energy generator comprising tidal energy converter(s), foundations and support structures;

“tidal energy converter” means that part of a tidal device that converts kinetic and potential energy contained within moving tidal water into electricity;

“tidal works” means so much of the authorised works as lies seaward of mean high water spring or any part or parts thereof and shall include any such works which have been repowered and in relation to article 21 (safety of navigation) includes any dredging works whether undertaken pursuant to article 16 (power to dredge) or otherwise;

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

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means in relation to the construction, maintenance repowering and decommissioning of the authorised works Menter Môn Morlais Limited or such other company to whom the benefit of the Order is transferred pursuant to article 6(1) and in relation to the tidal works includes any person to whom part of the tidal works or the offshore Order limits has been let pursuant to article 6(2);

“updated navigational risk assessment” means an updated navigational risk assessment for each relevant phase of each tidal work undertaken in accordance with the methodology of the navigational risk assessment carrying document reference 18UK1479-RN-MM-NRA-20 -3 and the navigational risk assessment addendum carrying reference MOR-MCO-DOC-001 forming part of the environmental

statement (as such assessments are updated from time to time) and taking into account the location and characteristics of the tidal works proposed for deployment, the method of construction anchoring proposed lighting, operation and any associated maintenance requirements or methods of repowering or decommissioning (as applicable) and an assessment of the cumulative effects of the proposals with previously deployed tidal works and shall include the extent of any proposed safety zone to be applied for in accordance with article 43; and

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

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

(3) All distances, directions and lengths stated in the description of the authorised works or in any description of powers or lands are to be construed as if the words “or thereabouts” were inserted after each such distance, direction and length, and distances between points on an authorised work are to be taken to be measured along the authorised work.

PART 2

Works Provisions

Principal powers

Power to construct maintain, repower and decommission works

3.—(1) Subject to the provisions of this Order the undertaker may construct, maintain and decommission the authorised works.

(2) Subject to the provisions of this Order the undertaker may construct, maintain and decommission the tidal works or any parts thereof within the offshore Order limits.

(3) Subject to the provisions of this Order the undertaker may repower Work No.1 or any parts thereof within the offshore Order limits.

(4) In constructing, maintaining, repowering and decommissioning the tidal works the documents in column 1 of Part 4 of Schedule 1 must be submitted to and approved in writing by the Welsh Ministers prior to the activity in column 2 occurring and such documents shall accord with any conditions relating to their content imposed on any marine licence for the relevant tidal works and shall not authorise any works outside the project parameters.

(5) The Welsh Ministers shall not approve any device deployment protocol pursuant to paragraph (4) in respect of the construction or repowering of surface emergent tidal devices and operational hubs in the array area without having first consulted with the Isle of Anglesey County Council and shall not approve any device deployment protocol, cable management plan, decommissioning programme or updated navigational risk assessment pursuant to paragraph (4) without having first consulted Trinity House and the Maritime and Coastguard Agency, and in each case the Welsh Ministers shall have regard to the responses of those consultees.

(6) The tidal works and any parts thereof must be constructed maintained, repowered and decommissioned (as appropriate) in accordance with the documents approved pursuant to paragraph (4) above save that such documents may be revised from time to time with the agreement of the Welsh Ministers.

(7) For the purposes of paragraphs (4) and (6) above any approval to an equivalent document pursuant to a condition of a marine licence granted for the tidal works or an agreed amendment to such a document shall be deemed to be approval of the Welsh Ministers.

(8) No tidal works may commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval

Power to deviate

4.—(1) In constructing or maintaining the onshore works the undertaker —

- (a) may in relation to Works Nos 3 to 9 deviate laterally to any extent from the lines or situations shown on the onshore plans within the limits of deviation;
- (b) must not in relation to Works Nos. 7 and 8 construct any works within 1.6 metres of the surface of the ground; and
- (c) may in relation to each of the authorised works specified in column (3) of the table set out in Chapter 2 of Part 2 to Schedule 1 to this Order, construct those works in the land identified in relation to that particular works in columns (1) and (2) of that table.

Power to Operate

5.—(1) The undertaker may operate and use the authorised works as a system for generating and transmitting electricity.

(2) In operating the tidal works the undertaker must comply with the documents set out in Part 4 of Schedule 1 as approved to the extent relevant to the operation and use of the tidal works.

Benefit of the Order

6.—(1) The undertaker may, with the consent of the Welsh Ministers transfer to another person (“the transferee”) any or all of the benefit of the provision of this Order including its right to construct, maintain, operate, repower and decommission the authorised works (or any part of them) and such related statutory rights as may be agreed between the undertaker and the transferee.

(2) The undertaker may grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee the right to construct, maintain, operate, repower and decommission the tidal works (or any part of them) and such related statutory rights as may be so agreed.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) or (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the undertaker.

Streets

Application of the 1991 Act

Power to execute street works

7.—(1) The undertaker may, for the purposes of the construction operation and maintenance of the authorised works, enter upon so much of any of the streets specified in Schedule 3 to this Order as is within the onshore Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it,
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a)-(d).

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

(3) Sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) This article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc) to this Order.

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

Temporary stopping up of streets

8.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction operation, maintenance and decommissioning of the authorised works, temporarily stop up alter or divert any street and may, for any reasonable time—

- (a) divert the traffic from the street; and
- (b) prevent persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street stopped up under the powers conferred by this article within the onshore Order limits as a temporary working site.

(3) Where the undertaker prevents persons from passing along the street, the undertaker must provide reasonable access to or from premises abutting or served by a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the streets set out in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the onshore plans, in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter or divert—

- (a) the streets set out as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent including as to notice to be given.

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

(7) If within 56 days of receiving and application for consent under paragraph (5)(b) a street authority fails to notify the undertaker of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

(8) This article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc) to this Order.

Access to works

9. The undertaker may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 5 (access to works) at or about the point marked A on the onshore plans to this Order; and
- (b) with the approval of the relevant highway authority after consultation, such approval not to be unreasonably withheld, form and lay out such other means of access or improve existing means of access, at such locations within the onshore Order limits as the undertaker reasonably requires for the purposes of the authorised works.

Agreements with street authorities

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

- (a) any stopping up, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 7 (power to execute street works).

(2) Such an agreement may, without limiting paragraph (1),—

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

Use of private roads for construction

11.—(1) The undertaker may use any private road within the onshore Order limits or any private road abutting the onshore Order limits which has a junction with such a road for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction, maintenance and decommissioning of the authorised works.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 of the 1961 Act.

Supplemental powers

Discharge of water

12.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation, maintenance or decommissioning of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the onshore Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain must be determined as if it were a dispute under section 106 of the Water Industry Act 1991⁽¹⁾.

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

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

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

(5) The undertaker must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse.

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

(7) This article does not authorise any groundwater activity or water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2016⁽²⁾ or override the requirement for a permit under regulation 12(1)(b) of the same.

(8) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 56 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, an internal drainage board, a local authority, or a sewerage undertaker; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991⁽³⁾ have the same meaning as in that Act.

(1) 1991 c. 56. Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(2) S.I. 2016/1154.

(3) 1991 c. 57.

Protective works to buildings

13.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the onshore Order limits as the undertaker considers to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of that part of the authorised works in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 56 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 49 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which the powers conferred by this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction operation or maintenance of that part of the authorised works,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without prejudice to article 48 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2)(1) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act.

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

(1) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

Power to survey and investigate land

14.—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land shown within the onshore Order limits or which may be affected by the authorised works;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land such notice to include notice of the recipient's right to compensation under paragraph (13).

(3) If the undertaker proposes to do any of the following, the notice must include details of what is proposed—

- (a) searching, boring or excavating;
- (b) leaving apparatus on land;
- (c) taking samples;
- (d) an aerial survey; and
- (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in paragraph (4).

(4) The instruments referred to in paragraph (3)(e) are—

- (a) The EIA Directive;
- (b) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and wild fauna and flora⁽¹⁾; or
- (c) Directive 2009/147/EEC⁽²⁾ of the European Parliament and of the Council of 13 November 2009 on the conservation of wild birds.

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

- (a) must, if so required, before or after entering the land produce written evidence of his authority to do so including any warrant issued under paragraph (6); and
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (6).

(6) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

- (a) that another person has prevented or is likely to prevent the exercise of that power; and
- (b) that it is reasonable to use force in the exercise of that power.

(7) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

(8) A warrant authorising the person to use force must specify the number of occasions on which the undertaker can rely on the warrant when entering and surveying or valuing land.

(1) OJ No. L 206, ss.7.1992, P.7.

(2) OJ L 20, 26.1.2010, P.7-25.

(9) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(10) Any evidence in proceedings for a warrant under this article must be given on oath.

(11) No trial holes may be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent may not be unreasonably withheld.

(12) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 56 days of receiving the application for consent—

- (a) under paragraph (11)(a) in the case of a highway authority; or
- (b) under paragraph (11)(b) in the case of a street authority,

that authority is deemed to have granted consent.

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

(14) Paragraphs (1) to (13) apply in relation to Crown land, however a person may only exercise the power conferred by paragraph (1) in relation to Crown land if the person has the permission of the appropriate authority.

Saving for Marine and Coastal Access Act 2009

15. No provision of this Order obviates the need to obtain a marine licence under Part 4 of the 2009 Act or to comply with the conditions of any marine licence.

Power to dredge

16.—(1) The undertaker may, for the purposes of constructing, operating, maintaining, repowering and decommissioning the tidal works from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the land within the offshore Order limits as adjoin or are near to the authorised works and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995⁽¹⁾) from time to time dredged by it.

(2) No such materials are to be laid down or deposited in contravention of the provisions of any enactment as respects the disposal of waste or dredged arisings.

Provision against danger to navigation

17.—(1) In case of damage to, or destruction or decay of, a tidal work or any part thereof excluding the exposure of cables, the undertaker must, as soon as reasonably practicable and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify Natural Resources Wales, Trinity House, the Maritime and Coastguard Agency, the United Kingdom Hydrographic Office and the Kingfisher Information Service of Seafish and lay down such buoys, exhibit such lights and take other such steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) In case of exposure of cables on or above the seabed, the undertaker must within three days following identification of a potential cable exposure, notify mariners by issuing a notice to mariners and by informing the Kingfisher Information Service of Seafish of the location and extent of exposure. Copies of all notices must be provided to the Natural Resources Wales, the Maritime and Coastguard Agency, Trinity House, and the United Kingdom Hydrographic office within five days.

(1) 1995 c. 21.

Abatement of tidal works abandoned or destroyed

18.—(1) Where a tidal work is abandoned, or falls into decay, the Welsh Ministers may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its proper condition, to such an extent and within such limits as the Welsh Ministers think proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over the land above the level of mean high water springs is abandoned or falls into decay and that part of the work on or over land above the level of mean high water springs is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Welsh Ministers may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Welsh Ministers may take whatever steps the Welsh Ministers consider appropriate to achieve the result required by the notice; and any expenditure incurred by the Welsh Ministers is to be recoverable from the undertaker.

Survey of tidal works

19.—(1) If the Welsh Ministers consider it expedient to do so, the Welsh Ministers may order a survey and examination of a tidal work or of the site on which it is proposed to construct or repower the work, and any expenditure reasonably incurred by the Welsh Ministers in any such survey and examination is recoverable from the undertaker.

(2) Subject to paragraph (3), such surveys must not be ordered more frequently than once a year; and before ordering such a survey—

- (a) the Welsh Ministers must consult the undertaker in order to establish what relevant survey information is already available; and
- (b) give the undertaker an opportunity to carry out the survey itself.

(3) Paragraph (2) does not apply in an emergency.

(4) Where the Welsh Ministers propose to order a survey and examination referred to in paragraph (1), the Welsh Ministers must do so in compliance with such reasonable stipulations relating to health, safety, security or confidentiality as the undertaker may impose.

Lights on tidal works

20.—(1) The undertaker must at or near—

- (a) a tidal work, including any temporary work; and
- (b) any plant, equipment or other obstruction placed in connection with the tidal works,

during the whole time of construction, operation, maintenance, repowering and decommissioning exhibit every night from sunset to sunrise and in periods of restricted visibility such lights, if any, and take such other steps for the prevention of danger to navigation as the Welsh Ministers or Trinity House may from time to time direct.

(2) After the completion of construction or repowering of a tidal work, the undertaker must at the outer extremity of it exhibit every night from sunset to sunrise and in periods of restricted visibility such lights, if any, and must take such steps, if any, for the prevention of danger to navigation as Welsh Ministers or Trinity House may from time to time direct.

Safety of navigation

21.—(1) No tidal works may be commenced constructed operated repowered or decommissioned until a scheme to secure safety of navigation for each relevant phase of the tidal work has been submitted to and approved in writing by the Welsh Ministers in consultation with Trinity House, the Maritime and Coastguard Agency and the Isle of Anglesey County Council.

(2) The scheme submitted for approval must be consistent with the updated navigational risk assessment for the relevant tidal work approved pursuant to Article 3(4) or Article 3(7) and with the Maritime and

Coastguard Agency's recommendations contained within MGN543 'Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues' and its annexes or subsequent updates.

(3) The authorised works are to be carried out in accordance with the approved scheme except to the extent that a variation to the approved scheme is agreed by the Welsh Ministers after consulting the persons mentioned in paragraph (1).

(4) For the purpose of article 21(1) the term commence shall include demolition work, investigations for the purpose of assessing seabed conditions and archaeological investigations and the erection of any temporary means of enclosure.

PART 3

Acquisition and Possession of Land

Powers of acquisition

Power to acquire land

22.—(1) The undertaker may acquire compulsorily—

- (a) so much of the land shown on the onshore plan within the limits of deviation as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the onshore plan and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes that are ancillary to the authorised works and their operation.

Power to acquire new rights and impose restrictive covenants

23.—(1) The undertaker may acquire compulsorily such easements or other rights over land referred to in paragraph 1 of article 22 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) In the case of the land specified in columns (1) and (2) of the table in Part 1 of Schedule 6 (land in which only new rights may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (3) of that table.

(3) In the case of the land specified in columns (1) and (2) of the table in Part 2 (land over which restrictive covenants may be imposed) of Schedule 6 the undertaker's power under article 22 (power to acquire land) also includes power to impose restrictive covenants over the land for the purposes specified in relation to the land in column (3) of the table.

(4) Subject to—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 4(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights)); and
- (b) Schedule A1 to the 1981 Act (as modified by paragraph 6(7) of the Schedule),

where the undertaker acquires a right over land or imposes a restrictive covenant under paragraph (1), (2) or (3), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation, and the provisions of the 1965 Act and the 1981 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Application of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽¹⁾ applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as so applied, has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)⁽²⁾ (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 36 (time limit for exercise of powers of acquisition) of the Morlais Demonstration Zone Order (20XX)⁽³⁾”.

(5) In section 11(1B)⁽⁴⁾ (powers of entry), in a case where the notice to treat relates only to the acquisition of an easement or other right over land or the imposition of a restrictive covenant, for “3 months” substitute “1 month”.

(6) In section 11A⁽⁵⁾ (powers of entry: further notices of entry)—

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

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 36 (time limit for exercise of powers of acquisition) of the Morlais Demonstration Zone Order 20[xx]”.

(8) In Schedule 2A⁽⁶⁾ (counter-notice requiring purchase of land not in notice to treat)—

- (a) paragraphs 1(2) and 14(2) substitute—

“(2) But see article 26(3) (Power to acquire subsoil only) of the Morlais Demonstration Zone Order (20XX), which excludes the acquisition of subsoil only from this Schedule; and”

- (b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 28 (temporary use of land for construction of works) of the Morlais Demonstration Zone Order (20XX).”

Application of the 1981 Act

25.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

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

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

(4) Omit section 5A⁽⁷⁾ (time limit for general vesting declaration).

(1) 1981 c. 67.
(2) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
(3) S.I. 2019/XXXX
(4) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.
(5) Inserted by section 186(3) of the Housing and Planning Act 2016.
(6) As inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.
(7) Inserted by section 182(2) of the Housing and Planning Act 2016.

(5) In section 5B(1)(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 36 (time limit for exercise of powers of acquisition) of the Morlais Demonstration Zone Order (20XX)”.

(6) In section 6(2) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A(3) of the Transport and Works Act 1992”.

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

(8) In Schedule A1(5) (counter-notice requiring purchase of land not in general vesting declaration), paragraph 1(2) —

“(2) But see article 26(3) (power to acquire subsoil only) of the Morlais Demonstration Zone Order (20XX) which excludes the acquisition of subsoil only from this Schedule.”

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied to the acquisition of land under article 22 (power to acquire land).

Power to Acquire Subsoil Only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1)(a) or (b) of article 22 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

- (a) Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 24 (application of Part 1 of the Compulsory Purchase Act 1965);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act (as modified by article 25 (application of the 1981 Act); and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

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

(5) Schedule 8 contains provision which in certain cases restricts the power under article 22 to the subsoil or under-surface of the land as lies more than 9 metres below the level of the surface.

Rights under or over streets

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

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that

(1) Inserted by section 202(2) of the Housing and Planning Act 2016.

(2) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.

(3) Inserted by S.I. 2017/16.

(4) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(5) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary Possession of Land

Temporary use of land for construction of works

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

- (a) enter upon and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (ii) any other land within the onshore Order limits in respect of which no notice of entry has been served under section 11(1) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been executed under section 4(2) (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land;
- (d) construct any works required as mentioned in article 3 (power to construct maintain repower and decommission works); and
- (e) construct any mitigation works on that land.

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

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

- (a) in the case of any land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised works specified in relation to that land in column (4) of Schedule 9; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the works or other purpose for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraphs (1)(d) or (1)(e);

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- (1) 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 16 to, the Housing and Planning Act 2016 and S.I. 2009/1307.
- (2) Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised works; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised works.

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

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

(7) Without affecting article 48 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(1) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

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

(9) Section 13(2) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1) (application of Part 1 of the 1965 Act).

Temporary use of land for maintenance of works

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

- (a) enter upon and take temporary possession of any land within the onshore Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

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

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

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

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

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

(8) Without prejudice to article 48 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(1) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(2) Section 13 was amended by sections 62(3), 139 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).

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

(10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24 (application of Part 1 of the Compulsory Purchase Act 1965).

(11) In this article “the maintenance period”, in relation to an authorised work, means the period of 5 years beginning with the date on which the work is opened for use.

Incorporation of the mineral code

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

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for “undertaking” substitute “authorised works”; and
- (c) for “compulsory purchase order” substitute “this Order”.

Protection of rights to fish

31.—(1) The undertaker must pay to the owners, occupiers or persons otherwise having a proprietary right of fishing injuriously affected by the construction, operation, maintenance or decommissioning of the authorised works, or otherwise by the exercise of the powers conferred on the undertaker by this Order, compensation for any damage sustained by such persons by reason of the construction, operation, maintenance or decommissioning or the exercise of the powers.

(2) Compensation under paragraph (1) must be determined, in case of dispute, under Part 1 of the 1961 Act.

Compensation

Disregard of certain interests and improvements

32.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Set-off for enhancement in value of retained land

33.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 23 (power to acquire new rights and impose restrictive covenants), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and

- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to him by reason of the construction of the authorised works.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Power to override easements and other rights

34.—(1) Any authorised activity which takes place on land within the onshore Order limits (whether the activity is undertaken by the undertaker, or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

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

(2) In this article “authorised activity” means—

- (a) the construction, operation, maintenance or decommissioning of any part of the authorised works;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where any interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,
- (c) the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person that is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

Private rights over land

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

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

(1) 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) Measures 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16, to the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

whichever is the sooner.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant being imposed in favour of the undertaker, whether compulsorily or by agreement;
- (b) on the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act; or
- (c) on the commencement of any activity authorised by the Order which interferes with or breaches those rights,
- (d) whichever is the earlier.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 271 or 272 (extinguishment of rights of statutory undertakers etc.) of the 1990 Act(1) applies.

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry on to it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(8) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Time limit for exercise of powers of acquisition

36.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat may be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 24 (application of Part 1 of the Compulsory Purchase 1965 Act); and
- (b) no declaration may be executed under section 4 of the 1981 Act as applied by article 25 (application of the 1981 Act).

(2) The powers conferred by article 28 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker

(1) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

Miscellaneous and General

Disapplication of legislative provisions

37.—(1) The provisions of section 36 of the Electricity Act 1989(1) do not apply in relation to the authorised works.

(2) The provisions of section 23 of the Land Drainage Act 1991(2) do not apply in relation to the authorised works.

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(3) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1) (d), (e), (fb), (g), (ga) or (h) of that Act(4), no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction maintenance of the authorised works and is attributable to the carrying out of the authorised works in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61(5) (prior consent for work on construction site), of the Control of Pollution Act 1974(6);
- (b) is a consequence of the construction, maintenance or decommissioning of the authorised works and cannot reasonably be avoided;
- (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised works and is attributable to the use of the authorised works in accordance with a noise monitoring scheme agreed with the planning authority pursuant to a condition of the deemed planning permission; or
- (d) is a consequence of the use of the authorised works and cannot reasonably be avoided.

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

Planning permission and supplementary matters

39.—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(7) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases)

(1) 1989 c. 29.
(2) 1991 c. 59.
(3) 1990 c. 43. Section 82 was amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25), section 103(1), (4) and (5) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and S.I. 2015/664.
(4) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp.8).
(5) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 (c. 25) and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp.8).
(6) 1974 c. 40.
(7) S.I. 1969/17 (Note these have been revoked).

Regulations 1975(1), or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order is treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999(2) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order is not to be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A)(3) of the 1990 Act to be granted in relation to works authorised by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

Power to lop trees overhanging the authorised works and removal of hedgerows

40.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised works or any apparatus used on the authorised works.

(2) In exercising the powers of paragraph (1), the undertaker must not do any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The undertaker may remove any hedgerows within the onshore Order limits that may be required to be removed for the purposes of carrying out the authorised works.

Application of landlord and tenant law

41.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, operation, repowering and decommissioning of the authorised works, or any part of them;
- (c) so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

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

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

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

(1) S.I. 1975/148.

(2) S.I. 1999/1892.

(3) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

Obstruction of construction of authorised works

42. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the undertaker in constructing, maintaining, operating, repowering or decommissioning of any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Safety zones for navigation, trawling and anchoring

43.—(1) The Welsh Ministers may in connection with the construction, operation, maintenance, repowering and decommissioning of any tidal works issue a notice or notices declaring that the areas described in the notice are to be safety zones.

(2) Any applications made by the Undertaker for a safety zone shall include an updated navigational risk assessment.

(3) Sections 95 to 98 of the 2004 Act and the 2007 Regulations shall apply to an application under paragraphs (2) and the declaration and operation of safety zones under paragraph (1).

(4) In this Article “safety zones” has the same meaning as in Chapter 2 of the 2004 Act.

Statutory undertakers and protective provisions etc

44. Schedule 10 (provisions relating to statutory undertakers and protective provisions etc) has effect.

Protection of interests

45. Schedule 11 (protective provisions) has effect.

Certification of plans etc

46. The undertaker must, as soon as practicable after the making of this Order, submit copies of the environmental statement, book of reference, the offshore works plans, the onshore plans, the outline marine biodiversity enhancement strategy, the sections and the restricted area plan to the Welsh Ministers for certification that they are, respectively, true copies of the environmental statement, book of reference, the offshore works plans, the onshore plans, the outline marine biodiversity enhancement strategy, the sections and the restricted area plan referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

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

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

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

(1) 1978 c. 30.

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

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

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that he requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) A person may revoke his consent to the use of electronic transmission in accordance with paragraph (8).

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

- (a) he must give notice in writing or by electronic transmission revoking any consent given by him for that purpose; and
- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date may not be less than 7 days after the date on which the notice is given.

(9) This article is not to be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

48. Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

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

(2) For the avoidance of doubt, any matter for which the consent or approval of the Welsh Ministers is required, or which is subject to the direction making powers of Trinity House, under any provision of this Order shall not be subject to arbitration.

Saving for Trinity House

50. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

The Neighbourhood Planning Act 2017

51. The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017⁽¹⁾ do not apply as regards this Order.

(1) 2017 c. 20.

SCHEDULE 1

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.

Work No. 2

Up to 9 export cables each comprising cables for the transmission of electricity and communication laid ~~on~~ 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 ~~within the area~~ laid either ~~laid~~ 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.

Works 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;

- (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- <ul style="list-style-type: none"> - 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-

		<ul style="list-style-type: none"> - 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	<p>Grid connection works to the existing electricity network comprising-</p> <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

(1) Grid co-ordinates for	(2) Longitude	(3) Latitude
Array Area (as show on Figure 1-1 of the environmental statement)		
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
Export Cable Corridor (as shown on Figure 1-1 of the environmental statement)		
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
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
Restricted Area - Northern (as shown on the restricted area plan)		
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' 8810"W	53° 18' 2251"N
16	4° 42' 9827"W	53° 18' 3882"N
Restricted Area - UKC 20m(as shown on the restricted area plan)		
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
Restricted Area - UKC 8m (as shown on the restricted area plan)		
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
18	4° 42' 5328"W	53° 18' 3882"N

PART 4

Article 3

Documents to be submitted and approved by the Welsh Ministers

(1)	(2)
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<i>Document</i>	<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 constructioncommencement 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
Marine Pollution Contingency Plan	Prior to the commencement of any related tidal works
Updated Navigational Risk Assessment	Prior to each of the following activities- <ul style="list-style-type: none"> - the constructioncommencement 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
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SCHEDULE 2

Article 22

Additional land which may be acquired or used

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

SCHEDULE 3

Article 7

Streets Subject to Street Works

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

SCHEDULE 4

Article 8

Streets to be Temporarily Stopped Up

<i>(1)</i> Area	<i>(2)</i> Street to be temporarily stopped up	<i>(3)</i> 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) <i>Area</i>	(2) <i>Description of access</i>
Isle of Anglesey County	South Stack Road Lon Isallt Portdafarch Road 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	Installation and maintenance of cables underground and/or with cable protection in connection with the authorised works
	9 and 51	Access for construction and maintenance of the authorised works

PART 2

Land over which restrictive covenants may be imposed

<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 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 24

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

Compensation enactments

1.—(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 (20XX));

(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 (20XX) 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” 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”;

(1) 1973 c. 26.

- (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
- (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.

5.—(1) 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.

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

- (a) “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.”.

(3) 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.

(4) Section 11(1) (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(2) (powers of entry: further notices of entry), 11B(3) (counter-notice requiring possession to be taken on specified date), 12(4) (penalty for unauthorised entry) and 13(5) (refusal to give possession to acquiring authority) of that Act are modified accordingly.

(5) 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

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- (1) 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.
 - (2) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (3) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.
 - (4) 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.
 - (5) 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).

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.

(6) 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.

(7) For Schedule 2A(1) to the 1965 Act substitute—

"SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. (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 (20XX) 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.

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.

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

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.

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

(2) If the 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
- (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".

SCHEDULE 8

Article 26

Land of which only Subsoil more than 9 metres beneath surface may be
Acquired

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

SCHEDULE 9

Article 28

Land of which Temporary Possession may be taken

<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 temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
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

~~Articles~~Article 44

Provisions relating to Statutory Undertakers etc

Apparatus of statutory undertakers etc on land acquired

1.—(1) Sections 271 to 274(1) 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 on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282,(2) 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(3); and

“public utility undertakers” has the same meaning as in the Highways Act 1980(4).

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- (1) Sections 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).
 - (2) 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.
 - (3) 2003 c. 21.
 - (4) 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).

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
- (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)(1).

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)—

- (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

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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(2)) 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—

(1) 2003 c. 21. (There are amendments to section 151(1) not relevant to this Order)
(2) 1989 c. 29.

- (aa) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
- (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⁽¹⁾ 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⁽²⁾;
- (c) a water undertaker⁽³⁾; 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 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).

(1) 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).

(2) 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.

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

(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 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

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

2. In this Part—

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

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

“network licence” means the network licence, as 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⁽¹⁾;

“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⁽²⁾) 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⁽³⁾) 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;

(1) 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).

(2) 2006 c.46.

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

“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.

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

(2) 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.

4.—(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*);
- (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.

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the 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.

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

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property
- (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.

7. The undertaker must—

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

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

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe 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.

(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 5(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 10(a) 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.

10. 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 5(3) or in constructing any protective works under paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, 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.

11.—(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 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of 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.

(10) For the purpose of paragraph 10(a) 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.

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

on receipt of 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.

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

14. Any additional expenses that Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 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.

15.—(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—

“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.

16. 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 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (including any claim relating to the relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part, there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into

with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

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

- (a) any railway property shown on the works 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.

19. 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.

20. 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

1.—(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⁽¹⁾;

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

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

“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.

2. 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.

3.—(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

(1) 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.

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

- (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).

Signatory text

Address
Date

Name
Welsh Ministers
Department

EXPLANATORY NOTE

(This note is not part of the Order)

The Order provides for the construction, operation, maintenance, repowering and decommissioning of a tidal electricity generating station and ancillary works off the coast of Anglesey in the area of Abraham's Bosom and for the connection of those works via onshore substations to the electricity grid.

A copy of the environmental statement, book of reference, offshore works plans, onshore plans, onshore plans and sections prescribed by rule 12 of the Transport and Works (Applications and Objections Procedure) (England and Wales) 2006 and certified in accordance with article 46 of this Order, may be inspected at the offices of Isle of Anglesey County Council, Council offices, Llangefni, Anglesey, LL77 7TW.