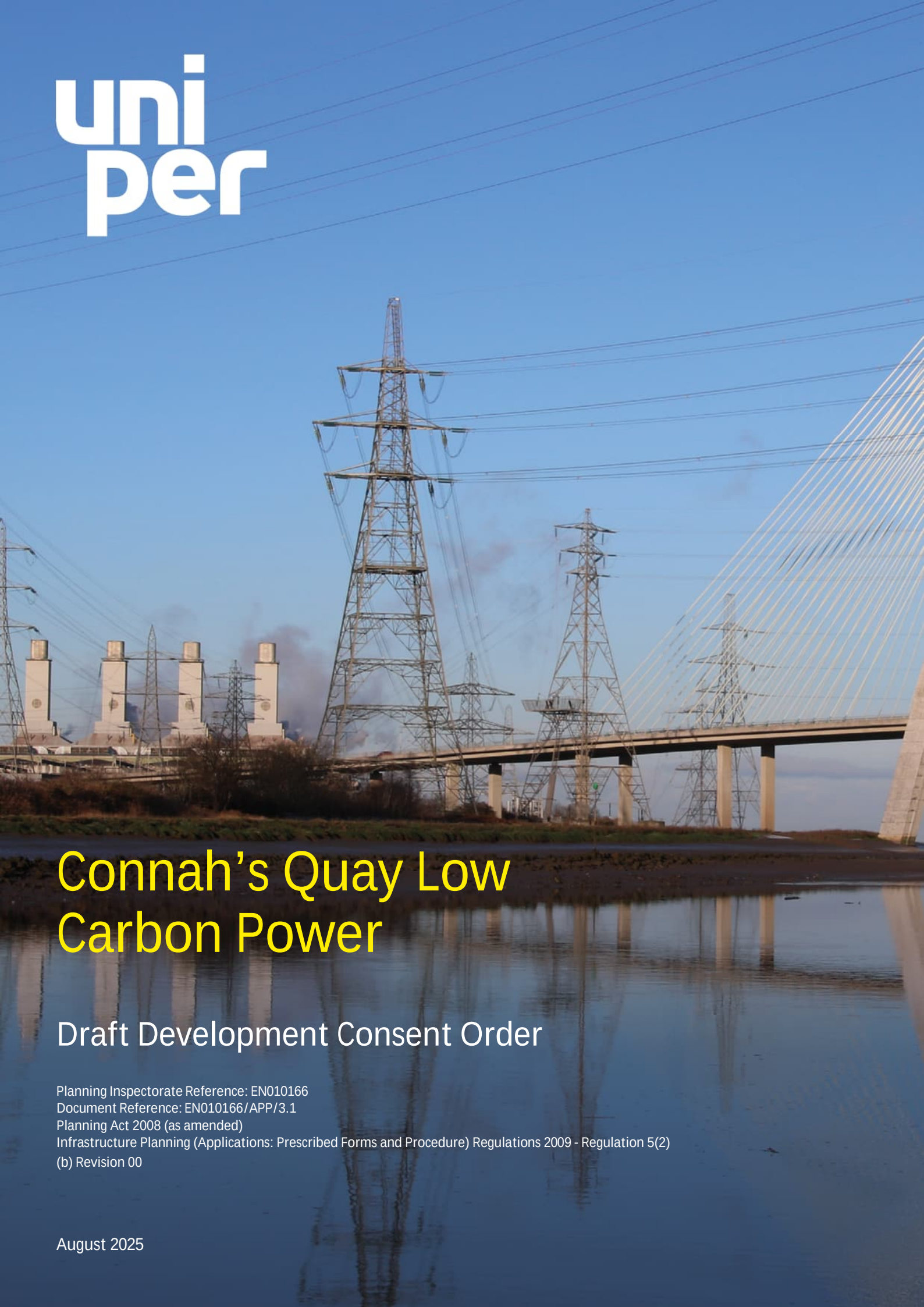

Connah's Quay Low Carbon Power

Draft Development Consent Order

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STATUTORY INSTRUMENTS

2025 No. 0000

INFRASTRUCTURE PLANNING

The Connah's Quay Low Carbon Power Order 202*

Made - - - -	***
Laid before Parliament	***
Coming into force	***

CONTENTS

PART 1
Preliminary

1. Citation and commencement 4
2. Interpretation 4

PART 2
Principal Powers

3. Development consent etc. granted by the Order 9
4. Operation and use of the authorised development 9
5. Power to maintain the authorised development 10
6. Limits of deviation 10
7. Benefit of the Order 10
8. Consent to transfer benefit of Order 10
9. Disapplication, application and modification of legislative provisions and modifications to section 36 consent 11
10. Planning Permission 13
11. Defence to proceedings in respect of statutory nuisance 14

PART 3
Streets

12. Street works 15
13. Power to alter layout, etc. of streets 16
14. Application of the 1991 Act 17
15. Stopping up of streets, public rights of way and rights of navigation 17
16. Temporary restriction of use of streets 18
17. Access to works 19
18. Agreements with street authorities 19

19. Use of private roads 20
20. Traffic regulation 20

PART 4
Supplemental powers

21. Discharge of water 21
22. Maintenance of drainage works 22
23. Authority to survey and investigate the land 22
24. Protective work to buildings 23

PART 5
Powers of Acquisition

25. Compulsory acquisition of land 25
26. Time limit for exercise of authority to acquire land compulsorily 25
27. Compulsory acquisition of rights and restrictive covenants 25
28. Statutory authority to override easements and other rights 26
29. Compulsory acquisition of land: minerals 26
30. Private rights 26
31. Application of the 1981 Act 28
32. Modification of the 2017 Regulations 29
33. Acquisition of subsoil or airspace only 29
34. Modification of Part 1 of the 1965 Act 30
35. Rights under or over streets 30
36. Temporary use of land for carrying out the authorised development 31
37. Temporary use of land for maintaining the authorised development 32
38. Statutory undertakers 33
39. Recovery of costs of new connections 34
40. Use of subsoil and airspace within the Order limits 34

PART 6
Miscellaneous and general

41. Application of landlord and tenant law 35
42. Felling or lopping of trees and removal of hedgerows 35
43. Crown rights 36
44. Protective provisions 36
45. Operational land for the purposes of the 1990 Act 36
46. Certification of plans, etc. 36
47. Service of notices 37
48. No double recovery 38
49. Arbitration 38
50. Temporary interference with river Dee and Public rights of navigation 38
51. Removal of human remains 38
52. Guarantees in respect of payment of compensation 40
53. Procedure in relation to certain approvals etc. 41

SCHEDULE 1 — Authorised development 41
SCHEDULE 2 — Requirements 47
PART 1 — Requirements 47
PART 2 — Applications made under requirements 54
SCHEDULE 3 — Legislation to be disapplied 57
SCHEDULE 4 — Streets subject to street works and alteration of layout 58
PART 1 — Streets subject to street works 58
PART 2 — Streets subject to temporary alteration of layout 63
PART 3 — Streets subject to permanent alteration of layout 66
SCHEDULE 5 — Streets, public rights of way and rights of navigation to be restricted and stopped up 67
PART 1 — Streets, public rights of way and rights of navigation to be temporarily stopped up 67
PART 2 — Streets, public rights of way and rights of navigation to be temporarily altered or managed 67
PART 3 — Streets, public rights of way and rights of navigation to be permanently stopped up 68
SCHEDULE 6 — Streets to be temporarily closed or restricted 68
SCHEDULE 7 — New means of access 74
SCHEDULE 8 — Traffic regulation measures 75
SCHEDULE 9 — Land in which only new rights etc., may be acquired 77
SCHEDULE 10 — Modification of compensation and compulsory purchase enactments for creation of new rights 78
SCHEDULE 11 — Land of which only temporary possession may be taken 82
SCHEDULE 12 — Removal of hedgerows 83
SCHEDULE 13 — Protective provisions 83
PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS 83
PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS 87
PART 3 — FOR THE PROTECTION OF NETWORK RAIL 89
PART 4 — FOR THE PROTECTION OF THE DEE CONSERVANCY 96
PART 5 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC 97
PART 6 — FOR THE PROTECTION OF GTC INFRASTRUCTURE LIMITED 106
PART 7 — FOR THE PROTECTION OF SP MANWEB AS ELECTRICITY UNDERTAKER 110
PART 8 — FOR THE PROTECTION OF LIVERPOOL BAY CCS LIMITED 117
PART 9 — FOR THE PROTECTION OF ENI UK LIMITED 121
PART 10 — FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER 125
SCHEDULE 14 — Documents and plans to be certified 133
SCHEDULE 15 — Arbitration rules 134

An application has been made to the Secretary of State under section 37 (Applications for orders granting development consent) of the Planning Act 2008(**a**) ("the 2008 Act"), and in accordance

(**a**) 2008 c. 29. Section 37 was amended by section 128(2) and Schedule 13, Part 1, paragraphs 1 to 5 of the Localism Act 2011(c. 20).

with the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009(**a**) for an order granting development consent.

The application was examined by the Examining Authority appointed by the Secretary of State ("the Panel") pursuant to Chapter [2] of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**b**).

The Examining Authority, having considered the application together with the documents that accompanied it, has submitted a report and recommendation to the Secretary of State in accordance with section 74(2) (Panel to decide, or make recommendation in respect of, application) of the 2008 Act(**c**).

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**d**), and has had regard to the documents and matters referred to in section 104(2) (Decisions in cases where national policy statement has effect) of the 2008 Act(**e**).

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(**f**), 115(**g**), 120(**h**), 122(**i**) and 123(**j**) of the 2008 Act, makes the following Order—

PART 1

Preliminary

Citation and commencement

1.—(1) This Order may be cited as The Connah's Quay Low Carbon Power Order 202*.

(2) This Order comes into force on [XXXX].

Interpretation

2.—(1) In this Order—

"1961 Act" means the Land Compensation Act 1961(**k**);

"1965 Act" means the Compulsory Purchase Act 1965(**l**);

(**a**) S.I. 2009/2264 as amended by the Infrastructure Planning (Miscellaneous Provisions) Regulations 2024/332.
(**b**) S.I. 2010/103. This instrument was amended by S.I. 2012/635.
(**c**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**d**) S.I. 2017/572.
(**e**) Section 104(2) was amended by paragraph 49 of Schedule 13 to the Localism Act 2011 and section 58(5) of the Marine and Coastal Access Act 2009 (c.23).
(**f**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**g**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**h**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**i**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**j**) Ibid.
(**k**) 1961 c. 33.
(**l**) 1965 c. 56.

"1971 Act" means the Banking and Financial Dealings Act 1971(**a**);

"1980 Act" means the Highways Act 1980(**b**);

"1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**c**);

"1984 Act" means the Road Traffic Regulation Act 1984(**d**);

"1989 Act" means the Electricity Act 1989(**e**);

"1990 Act" means the Town and Country Planning Act 1990(**f**);

"1991 Act" means the New Roads and Street Works Act 1991(**g**);

"2003 Act" means the Communications Act 2003(**h**);

"2008 Act" means the Planning Act 2008(**i**);

"2016 Regulations" means the Environmental Permitting (England and Wales) Regulations 2016(**j**);

"2017 Regulations" means the Compulsory Purchase of Land (Vesting Declarations) (Wales) Regulations 2017(**k**);

"access, streets, rights of way and rights of navigation plans" means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"address" has the meaning given by section 235(1)(**l**) (interpretation) of the 2008 Act;

"AGI" means above ground installation, being a secure compound above ground level containing equipment relating to the pipeline which is necessary for its operation or maintenance, and the AGIs include PIG facilities, ancillary infrastructure (including lighting and parking provisions), and electrical and instrumentation kiosks;

"apparatus" has the same meaning as in section 105(1) (minor definitions) of the 1991 Act, save where expressly provided otherwise within this Order;

"authorised development" means the development described in Schedule 1 (authorised development) and any other development authorised by this Order that is development within the meaning of section 32 (Meaning of "development") of the 2008 Act;

"bank holiday" means a bank holiday in England and Wales under section 1 (bank holidays) of the 1971 Act(**m**);

"book of reference" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"building" has the meaning given by section 235(1) (interpretation) of the 2008 Act;

"business day" means a day other than a Saturday, Sunday or bank or public holiday;

"carriageway" has the same meaning as in the 1980 Act;

"CEMP" means the construction environmental management plan to be prepared and approved under requirement 4 (construction environmental management plan) of Schedule 2 (requirements);

(**a**) 1971 c. 80.
(**b**) 1980 c. 66.
(**c**) 1981 c. 66.
(**d**) 1984 c. 27.
(**e**) 1989 c. 29.
(**f**) 1990 c. 8.
(**g**) 1991 c. 22.
(**h**) 2003 c. 21.
(**i**) 2008 c. 29.
(**j**) S.I. 2016/1154.
(**k**) S.I. 2017/362.
(**l**) 2008 c. 29.
(**m**) 1971 c. 80.

"chief officer of police" means the chief officer of police of the police area in which a power under this Order is sought to be exercised;

"commence" means carry out a material operation, as defined in section 155 (when development begins) of the 2008 Act (when development begins), comprised in or for the purposes of the authorised development other than site enabling works and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"cycle track" has the same meaning as in section 329(1) (Further provision as to interpretation) of the 1980 Act and for the purposes of this Order(**a**) includes a right of way on foot;

"Dee Conservancy" means the statutory conservancy and navigation authority for the river Dee (as established under the Dee Conservancy Act 1889(**b**)) and includes its role as competent harbour authority and local lighthouse authority for its statutory area;

"demolition plan" means the plan named 'figure 5-2 – demolition areas' in the environmental statement which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

and in this definition "electronic communications network" has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the 2003 Act;

"ENI UK Limited" means ENI UK Limited, incorporated under company number 00862823 and having its registered office at Eni House, 10 Ebury Bridge Road, London, SW1W 8PZ;

"ENI Works" means Work No. 1(h) and site wide works required in connection with Work No. 1(h);

"environmental statement" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"European Site" has the same meaning as in Regulation 3 (interpretation) of The Conservation of Habitats and Species Regulations 2017(**c**);

"existing gas treatment plant" means the existing gas treatment plant which is owned by Uniper, or any successor in title or function, within the Order limits;

"existing ENI AGI" means the existing AGI which is owned by ENI UK Limited, or any successor in title or function within the Order limits;

"existing pipeline" means the existing natural gas pipeline, constructed in accordance with a pipeline construction authorisation and deemed planning permission issued by the Secretary of State on 16 December 1993 under the Pipelines Act 1962 for "a 24 inch natural gas cross-country pipeline from Point of Ayr to Connah's Quay", which is to be repurposed under this Order from the proposed carbon dioxide AGI to a point south of Pentre Ffwrndan, east of Allt-Goch Lane;

"existing power station" means the existing Connah's Quay power station constructed in accordance with the section 36 consent;

"Flint AGI" means the AGI at Flint as described in Work No. 8;

"framework construction environmental management plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is

(**a**) The definition of "cycle track" was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(**b**) 1889 c. clvi.

(**c**) S.I 2017/1012. The definition of "European site" cross refers to Regulation 8, which was amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019/579.

certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"framework construction traffic management plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"hedgerow removal plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"highway", "highway authority" and "local highway authority" have the same meaning as in the 1980 Act and "highway" includes part of a highway;

"HyNet Order" means The HyNet Carbon Dioxide Pipeline Order 2024;

"land plans" means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"LEMP" means the landscape and ecological management plan;

"limits of deviation" means the limits of deviation referred to in article 6 (limits of deviation);

"Liverpool Bay CCS Limited" means Liverpool Bay CCS Limited, incorporated under company number 13194018 and having its registered office at Eni House, 10 Ebury Bridge Road, London SW1W 8PZ;

"Liverpool Bay CCS Works" means Work Nos. 1(e), 7 to 9 and 10(e) and site wide works required in connection with Work Nos. 1(e), 7 to 9 and 10(e);

"maintain" includes inspect, assess, repair, test, cleanse, adjust, landscape, preserve, make safe, divert or alter the authorised development, and remove, clear, reconstruct, re-new, re-lay, re-furbish, improve, replace, dismantle, demolish, abandon or decommission any part of the authorised development, provided these do not give rise to any materially new or materially different environmental effects identified in the environmental statement, and any derivative of "maintain" is to be construed accordingly;

"National Grid" means National Grid Electricity Transmission plc, incorporated under company number 02366977 and having its registered office at 1 - 3 Strand, London, WC2N 5EH;

"National Grid Works" means Work No. 6 and site wide works required in connection with Work No. 6;

"new pipeline" means the pipeline to be constructed and operated as part of the authorised development forming Work No. 7;

"Order land" means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

"Order limits" means the limits shown on the works plans within which the authorised development may be carried out;

"PIG" means pipeline inspection gauge, a device used for internal maintenance, cleaning and monitoring of a pipeline;

"pipeline" means the existing pipeline and the new pipeline and includes all associated works to the existing pipeline and the new pipeline including all AGIs;

"preliminary demolition" means the demolition of the existing gas treatment plant and existing ENI AGI, store buildings, and contractors' facilities associated with the existing power station as shown on the demolition plan;

"proposed carbon dioxide AGI" means the AGI forming Work No. 1(e);

"relevant planning authority" means in any given provision of this Order (including the requirements), the local planning authority—

(a) for the area of land to which the provision relates is situated; and

(b) with the relevant legislative competence under the 1990 Act for the matter to which that provision relates;

"requirements" means those matters set out in Schedule 2 (requirements) to this Order and a reference to a numbered requirement is a reference to the requirement imposed by the corresponding numbered paragraph of that Schedule;

"section 36 consent" means the consent granted by the Secretary of State pursuant to section 36 (consent required for construction of etc. generating stations) of the 1989 Act(**a**) in respect of the existing power station dated 25 March 1993;

"site enabling works" means operations consisting of—

(a) site preparation works;

(b) remediation works;

(c) environmental surveys;

(d) investigation, site or utility surveys;

(e) erection of temporary fencing to site boundaries or marking out of site boundaries;

(f) installation of temporary amphibian and reptile fencing;

(g) the diversion or laying of services;

(h) temporary drainage works;

(i) site clearance (including vegetation removal and preliminary demolition); and

(j) environmental mitigation measures;

"site wide works" means the works listed at paragraph 14 within Schedule 1 (authorised development);

"stacks" means the emissions stacks, heat recovery steam generator stacks and carbon dioxide absorber stacks as specified in Work No. 1 of Schedule 1 (authorised development);

"statutory undertaker" means any person falling within section 127(8) (Statutory undertakers' land) of the 2008 Act and includes a public communications provider as defined in section 151 (interpretation of Chapter 1) of the 2003 Act;

"street" means a street within the meaning of section 48 (Streets, street works and undertakers) of the 1991 Act(**b**), together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act(**c**);

"traffic authority" has the same meaning as in the 1984 Act;

"tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means Uniper or any person who for the time being has the benefit of this Order in accordance with articles 7 (benefit of the Order) and 8 (consent to transfer benefit of Order);

"Uniper" means Uniper UK Limited, incorporated under company number 02796628 and having its registered office at Compton House, 2300 The Crescent, Birmingham Business Park, Birmingham, England, B37 7YE;

"Uniper UK Connah's Quay Low Carbon Power Limited" means Uniper UK Connah's Quay Low Carbon Power Limited, incorporated under company number 16091747 and having its registered office at Compton House, 2300 The Crescent, Birmingham Business Park, Birmingham, England, B37 7YE; and

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(**a**) 1989 c. 29.
(**b**) Section 48 was amended by section 124 (1) and (2) of the Local Transport Act 2008 (c. 26).
(**c**) "Street authority" is defined in section 49, which was amended by section 1(6) and paragraphs 113 and 117 of Schedule 1 to the Infrastructure Act 2015.

"works plans" means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.).

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

(3) All distances, capacities, directions, areas and lengths referred to in this Order are approximate and distances between lines or points on a numbered work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points or lines identified by letters or numbers are to be construed as references to points or lines so lettered or numbered on the relevant plans.

(6) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plan and a reference in this Order to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule and a reference to "Work No. 4" or "numbered work 4" means numbered works 4(a) and 4(h) inclusive and the same principle applies to such numbered works that contain letters..

(7) References to any statutory body includes that body's successor in function from time to time that have jurisdiction over the authorised development.

(8) In this Order, the expression "includes" is to be construed without limitation.

(9) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement must not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect or positive environmental effect, or the increase of an assessed positive environmental effect, that was reported in the environmental statement as a result of the authorised development.

PART 2

Principal Powers

Development consent etc. granted by the Order

3. Subject to the provisions of this Order and the requirements in Part 1 of Schedule 2 (requirements) the undertaker is granted development consent for the authorised development to be carried out and maintained.

Operation and use of the authorised development

4.—(1) The undertaker may at any time operate, maintain and use the authorised development save that only Liverpool Bay CCS Limited or any successor in function or title may at any time operate, maintain and use the existing pipeline, the new pipeline and Flint AGI except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) Subject to the provisions of this Order the existing pipeline may be used for the conveyance of carbon dioxide.

(3) The consent granted under paragraphs (1) and (2) does not relieve the undertaker or Liverpool Bay CCS Limited from any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation and use of the authorised development.

Power to maintain the authorised development

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

Limits of deviation

6.—(1) — In carrying out or maintaining the authorised development, the undertaker may—

(a) deviate the works laterally within the extent of the works shown on the works plans;

(b) deviate the underground Liverpool Bay CCS Works vertically—

(i) upwards to a limit of not less than 1.2 metres below the surface of the ground (except where ground conditions make compliance with this upwards limit impracticable in which case the upwards limit is 0.452 metres below the surface of the ground); and

(ii) downwards to any extent as may be found necessary or convenient;

(c) deviate works other than the underground Liverpool Bay CCS Works vertically—

(i) upwards or above ground level to the height limits set for those works shown in Table 1 in the design principles document; and

(ii) downwards to any extent as may be found necessary or convenient.

(2) The maximum limits of deviation specified in paragraphs 6 (b) and (c) do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects to those identified in the environmental statement.

Benefit of the Order

7.—(1) Subject to paragraph (2), article 4 (operation and use of the authorised development) and article 8 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker, save for—

(a) the ENI Works in relation to which the provisions of this Order have effect for the benefit of Uniper and ENI UK Limited;

(b) the Liverpool Bay CCS Works and the existing pipeline in relation to which the provisions of this Order have effect for the benefit of Uniper and Liverpool Bay CCS Limited; and

(c) the National Grid Works in relation to which the provisions of this Order have effect for the benefit of Uniper and National Grid.

(2) Paragraph (2) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

8.—(1) Subject to paragraph (2), the undertaker may with the written consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with any transfer or grant under paragraph (2) references in the Order to the undertaker, except in paragraph (4), includes references to the transferee or lessee.

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

(a) the transferee or lessee is Uniper UK Connah's Quay Low Carbon Power Limited;

(b) the transferee or lessee is Liverpool Bay CCS Limited;

(c) the transferee or lessee is ENI UK Limited;

(d) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act;

(e) the transferee or lessee is a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(**a**); or

(f) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claim has been made and has been compromised or withdrawn;

(iii) compensation has been paid in full and final settlement of any such claim;

(iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(5) Where an agreement has been made in accordance with paragraph (2)—

(a) the benefit ("the transferred benefit") includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;

(b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee or lessee;

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

Disapplication, application and modification of legislative provisions and modifications to section 36 consent

9.—(1) The following enactments do not apply in relation to the carrying out or maintenance of any work or operation for the purpose of or in connection with, the construction, maintenance, operation or decommissioning of the authorised development—

(a) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained in this Order;

(b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991(**b**);

(**a**) 1986 c. 44. 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 (c. 27).

(**b**) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of

(c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(**a**);

(d) sections 23 (prohibition on obstructions etc. in watercourses) and 30 (authorisation of drainage works in connection with a ditch) of the Land Drainage Act 1991(**b**); and

(e) the provisions of the Neighbourhood Planning Act 2017(**c**) in so far as they relate to the temporary possession of land under articles 36 (temporary use of land for carrying out the authorised development) and 37 (temporary use of land for maintaining the authorised development).

(2) Section 141 (restriction on planting trees etc. in or near carriageway) of the 1980 Act does not apply to any tree or shrub planted with the agreement of the highway authority in the course of the authorised development before completion of construction.

(3) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(**d**), any building comprised in the authorised development must be deemed to be—

(a) a building into which people do not normally go; or

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(4) Section 42 (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) of the Local Government (Miscellaneous Provisions) Act 1976(**e**) will not apply to the extent that it would make provisions of this Order authorising the construction, operation and maintenance and decommissioning of the authorised development subject to other provisions.

(5) Development consent granted by this Order is to be treated as planning permission for the purposes of paragraph 5 (exemptions) of the Schedule to the Town and Country Planning (Trees) Regulations 1999(**f**) and the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(6) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(**g**), any felling comprised in the carrying out or maintenance of any work or operation required for the purposes of, or in connection with, the construction, maintenance, operation or decommissioning of the authorised development is deemed to be immediately required for the purpose of carrying out or maintaining development authorised by planning permission granted under the 1990 Act.

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

"(k) or for carrying out or maintenance of development which has been authorised by The Connah's Quay Low Carbon Power Order 202*.".

(8) Section 28P (offences) of the Wildlife and Countryside Act 1981(**i**) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (4)(b) the following—

"(c) the operation in question was authorised by The Connah's Quay Low Carbon Power Order 202*.".

Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(**a**) 1991 c .59 Section 66 is as substituted by section 31 of, and paragraphs 25 and 38 of Schedule 2 to the Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c .21).

(**b**) 1991 c. 59.

(**c**) 2017 c. 20.

(**d**) The Community Infrastructure Levy Regulations 2010 (S.I. 2010/948).

(**e**) 1976 c. 57. Section 42 was amended by section 15(6) of the Food and Environment Protection Act 1985 (c. 48).

(**f**) S.I. 1999/182. Schedule 1 was amended by regulation 2(3) of the Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012/792.

(**g**) 1967 c. 10. Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.

(**h**) S.I. 1997/1160.

(**i**) 1981 c. 69. Section 28P(4) contains words substituted by Natural Environment and Rural Communities Act 2006 c. 16 Schedule 11(1) paragraph 79 (October 1, 2006).

(9) Any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order.

(10) To the extent that there is an inconsistency between the section 36 consent and any provision of this Order no enforcement action can be taken under the section 36 consent following the carrying out or maintenance of the authorised development.

(11) The carrying out or maintenance of the authorised development is to be treated as a reasonable excuse for the purposes of section 36(6) (consent required for construction etc. of generating stations) of the 1989 Act(**a**).

Planning Permission

10.—(1) To the extent any development carried out or used pursuant to a planning permission granted under section 57(**b**) (requirement of planning permission) of the 1990 Act or compliance with any conditions of that permission is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development—

(a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission is capable of physical implementation; and

(b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that planning permission, or compliance with any conditions of that permission, whether inside or outside the Order limits.

(2) Where the undertaker identifies an incompatibility between a condition of a planning permission and this Order that engages paragraph (4), it must notify the relevant planning authority and use reasonable endeavours to notify the current beneficiary of the affected planning permission as soon as reasonably practicable.

(3) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

(a) not itself a development for which development consent is required under the 2008 Act or part of such a project; or

(b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the construction, maintenance, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this Order.

(4) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 (Planning permission required for development) of the 1990 Act including permissions falling under paragraphs (2) or (4), is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(5) Nothing in this Order restricts the undertaker from seeking or implementing, or the relevant planning authority from granting, planning permission for development within the Order limits.

(6) In this article—

(a) "enforcement action" means any enforcement action provided for under Part 7 (enforcement) of the 1990 Act;

(**a**) 1989 c. 29.

(**b**) Section 57 was amended by paragraphs 34 and 35 of Schedule 2 to the Planning Act 2008, paragraphs 1 and 3 of Schedule 2 to the Localism Act 2011 (c. 20) and paragraphs 2 and 4 of Part 2 of Schedule 4 to the Infrastructure Act 2015.

(b) "initiate" means when development of land shall be taken to be begun as per section 56 (time when development begun) of the 1990 Act, and "initiated" and "initiation" are defined accordingly; and

(c) "planning permission" means planning permission granted under the 1990 Act including planning permission deemed to be granted under article 3 (permitted development) of the 2015 Regulations.

Defence to proceedings in respect of statutory nuisance

11.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(**a**) in relation to a nuisance falling within paragraphs (b) (smoke emitted from premises so as to be prejudicial to health or a nuisance), (c) (fumes or gases emitted from premises so as to be prejudicial to health or a nuisance), (d) (any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance), (e) (any accumulation or deposit which is prejudicial to health or a nuisance), (fb) (artificial light emitted from premises so as to be prejudicial to health or a nuisance), (g) (noise emitted from premises so as to be prejudicial to health or a nuisance), (ga) (noise that is prejudicial to health or nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road) and (h) (any other matter declared by any enactment to be a statutory nuisance) of section 79(1) (Statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance, operation or decommissioning of the authorised development and that the nuisance is attributable to the carrying out or maintenance of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(**b**);

(b) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development in accordance with the controls and measures relating to noise as described in the construction environment management plan approved under Part 1 of Schedule 2 (requirements) or in accordance with the noise levels set out in an environmental permit relating to the operation of the authorised development;

(c) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided;

(d) is a consequence of complying with a requirement of this Order and that it cannot reasonably be avoided; or

(e) is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) For the purposes of paragraph (1) above, compliance with the controls and measures relating to noise described in the CEMP will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Where the relevant planning authority is acting in accordance with section 60(4) and section 61(4) of the Control of Pollution Act 1974 in relation to the construction of the authorised development then the relevant planning authority must also have regard to the controls and measures relating to noise referred to in the CEMP approved under Part 1 of Schedule 2 (requirements).

(4) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act

(**a**) 1990 c. 43.
(**b**) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to this Order.

1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction, maintenance, operation or decommissioning of the authorised development.

(5) In this article "premises" has the same meaning as in section 79 of the Environmental Protection Act 1990(**a**).

PART 3

Streets

Street works

12.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Part 1 (streets subject to permanent street works) and Part 2 (streets subject to temporary street works) of Schedule 4 (streets subject to street works and alteration of layout) as is within the Order limits and may without the consent of the street authority—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;

(c) remove or use all earth and materials in or under the street;

(d) place apparatus in or under the street;

(e) maintain, alter or renew apparatus in or under the street or change its position;

(f) demolish, remove, replace and relocate any street furniture in the street;

(g) repair, replace or otherwise alter the surface or structure of the street or any culvert in or under the street;

(h) execute any works to provide or improve sight lines;

(i) execute and maintain any works to provide hard and soft landscaping;

(j) carry out re-lining and placement of road markings;

(k) remove and install temporary and permanent signage; and

(l) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (k).

(2) The authority given by paragraph (1) is a statutory right or licence 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) The undertaker, during and for the purposes of carrying out, maintaining or operating the authorised development, may temporarily close, alter or divert any street or private means of access and may for any reasonable time—

(a) divert the traffic from the street and prevent access via the private means of access; and

(b) subject to paragraph (5), prevent all persons from passing along the street.

(4) Without limiting the scope of paragraph (3), the undertaker may use as a temporary working site any street or private means of access which has been temporarily closed, altered or diverted under the powers conferred by this article.

(5) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration or diversion of a street under this article if there would otherwise be no such access.

(6) Without limiting the scope of the powers conferred by paragraph (1) but subject to paragraph (7), the undertaker may, for the purposes of the authorised development, or for purposes ancillary

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(**a**) 1990 c. 43.

to it, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out or maintaining the works set out in paragraph (1).

(7) The powers conferred by paragraph (6) must not be exercised without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed.

(8) If a street authority that receives an application for consent under paragraph (7) fails to notify the undertaker of its decision within 42 days beginning with the date on which the application was received by that street authority, that authority will be deemed to have granted consent.

(9) In this article "apparatus" has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act save that "apparatus" includes pipelines, fibre optic or other telecommunication cables, aerial markers, cathodic protection test posts, field boundary markers, monitoring kiosks, and electricity cabinets.

Power to alter layout, etc. of streets

13.—(1) The undertaker may for the purposes of carrying out or maintaining the authorised development alter the layout of, or carry out any works in, a street specified in column (2) of Schedule 4 (streets subject to street works and alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without limitation on the specific powers conferred by paragraph (1), but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining the authorised development, permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits and the layout of any street having a junction with such a street and, without limiting the scope of this paragraph, the undertaker may—

(a) increase the width of the carriageway of the street by reducing the width of any footpath, footway, cycle track, central reservation or verge within the street;

(b) alter the level or increase the width of any such street, footpath, footway, cycle track, central reservation or verge;

(c) reduce the width of the carriageway of the street;

(d) execute any works to widen or alter the alignment of the carriageway, including pavements;

(e) make and maintain crossovers and passing places;

(f) execute any works of surfacing or resurfacing of the highway;

(g) carry out works for the provision or alteration of parking places, loading bays and cycle tracks;

(h) execute any works necessary to alter or provide facilities for the management and protection of pedestrians;

(i) execute any works to provide or improve sight lines required by the highway authority;

(j) execute and maintain any works to provide hard and soft landscaping;

(k) carry out re-lining and placement of new temporary markings;

(l) remove and replace kerbs and flume ditches for the purposes of creating permanent and temporary accesses;

(m) alter any existing street furniture including bollards, barriers, street lighting, traffic signals, traffic signs or other similar feature; and

(n) execute temporary measures over the street, including bridging structures, barriers or similar.

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

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.

Application of the 1991 Act

14.—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

(a) the carrying out of works under articles 12 (street works) and 13 (power to alter layout, etc. of streets);

(b) the stopping-up of a street, public right of way or right of navigation by the undertaker under article 15 (stopping up of streets, public rights of way and rights of navigation); and

(c) the temporary restriction, temporary alteration or temporary diversion of a street by the undertaker under article 16 (temporary restriction of use of streets),

whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act(**a**) are—

(a) subject to paragraph (3), section 55 (notice of starting date of works);

(b) section 57 (notice of emergency works);

(c) section 60 (general duty of undertakers to co-operate);

(d) section 68 (facilities to be afforded to street authority);

(e) section 69 (works likely to affect other apparatus in the street);

(f) section 76 (liability for cost of temporary traffic regulation);

(g) section 77 (liability for cost of use of alternative route); and

(h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (4)(a).

(3) Section 55 (notice of starting date of works) of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 (notice of emergency works) of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(4) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

(a) section 56 (power to give directions as to timing of street works);

(b) section 56A (power to give directions as to placing of apparatus);

(c) section 58 (restriction on works following substantial road works);

(d) section 58A (restriction on works following substantial street works); and

(e) schedule 3A (restriction on works following substantial street works).

Stopping up of streets, public rights of way and rights of navigation

15.—(1) During and for the purposes of carrying out or maintaining the authorised development, the undertaker may temporarily or permanently close, stop up, prohibit the use of, restrict the use

(**a**) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c. 18).

of, alter or divert any street, public right of way or right of navigation and may for any reasonable time—

(a) divert the traffic or a class of traffic from the street, public right of way or right of navigation; and

(b) subject to paragraph (2), prevent all persons from passing along the street, public right of way or right of navigation.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, prohibition, restriction, alteration or diversion of a street, public right of way or right of navigation under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, stop up, prohibit the use of, restrict the use of or, for the purposes of paragraphs (1)(a) or (1)(b), alter or divert each of the streets, public rights of way or rights of navigation specified in column (2) of Part 1 of Schedule 5 (streets, public rights of way and rights of navigation to be restricted and stopped up) to the extent specified in column (3).

(4) Without prejudice to the generality of paragraph (1), the undertaker may permanently close, stop up, prohibit the use of, restrict the use of or, for the purposes of paragraphs (1)(a) or (1)(b), alter or divert each of the streets, public rights of way or rights of navigation specified in column (2) of Part 2 of Schedule 5 (streets, public rights of way and rights of navigation to be restricted and stopped up) to the extent specified in column (3).

(5) No street, public right of way or right of navigation may be stopped up under paragraph (3) or (4) until a temporary alternative route for the passage of such traffic as could have used the street, public right of way or right of navigation has been provided and subsequently maintained by the undertaker until either the existing route has been reinstated or a permanent alternative has been provided and open to public use.

(6) The alternative route provided under paragraph (5) must be provided to the reasonable satisfaction of the local highway authority, between the points specified in column (4) of Schedule 5 (streets, public rights of way and rights of navigation to be restricted and stopped up).

(7) The undertaker must not temporarily stop up, prohibit the use of, restrict the use of, alter or divert—

(a) any street, public right of way or right of navigation specified in paragraph (3) or (4) without first consulting the street authority; or

(b) any other street, public right of way or right of navigation

without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

(8) The undertaker may, in connection with the carrying out of the authorised development, for any reasonable time, authorise the use of motor vehicles on any public right of way specified in Part 2 (streets, public rights of way and rights of navigation to be temporarily altered or managed) of Schedule 5 (streets, public rights of way and rights of navigation to be restricted and stopped up) where there is otherwise no public right to use motor vehicles.

(9) 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 (determination of questions of disputed compensation) of the 1961 Act.

(10) Without prejudice to the scope of paragraph (1), the undertaker may use any street, public right of way, right of navigation or access land which has been stopped up under the powers conferred by this article and within the Order limits as a working site.

Temporary restriction of use of streets

16.—(1) The undertaker, during and for the purposes of carrying out or maintaining the authorised development, may temporarily close, alter or divert any street and may for any reasonable time—

(a) divert the traffic or a class of traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limiting paragraph (1), the undertaker may use any street temporarily closed under the powers conferred by this article within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, 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 close, alter or divert the streets set out in column (2) of Schedule 6 (streets to be temporarily closed or restricted) to the extent specified, by reference to the letters and numbers shown on the access, streets, rights of way and rights of navigation plans, in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site, any street other than those referred to in Schedule 5 (streets, public rights of way and rights of navigation to be restricted and stopped up) and Schedule 6 (streets to be temporarily closed or restricted) without the consent of the street authority, which may attach reasonable conditions to the consent but such consent is not to be unreasonably withheld or delayed.

(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 as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.

Access to works

17.—(1) Subject to paragraph (2), the undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within or adjacent to the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) Subject to paragraphs (3), (4) and (5), the power set out in paragraph (1) may not be exercised without the undertaker having first obtained the consent of the street authority in consultation with the relevant planning authority.

(3) Such consent from the street authority may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed.

(4) If the street authority which has received an application for consent under paragraph (2) fails to notify the undertaker of its decision before the end of the 42 day period beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.

(5) The consent of the street authority is not required for the formulation, laying out or improvement of a new or existing means of access as described in Schedule 1 (authorised development) and Schedule 7 (new means of access).

Agreements with street authorities

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

(a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;

(b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(c) any stopping up, alteration or diversion of a street authorised by this Order;

(d) the carrying out in the street of any of the works referred to in article 12 (street works) and article 13 (power to alter layout, etc. of streets);

(e) the adoption by a street authority which is the highway authority of works—

(i) undertaken on a street which is existing public maintainable highway; or

(ii) which the undertaker and highway authority agree to be adopted as public maintainable highway; or

(f) such works as the parties may agree.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) include an agreement between the undertaker and street authority specifying a reasonable time for completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Use of private roads

19.—(1) Subject to paragraphs (2) and (3), the undertaker may use any private road within the Order limits 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, operation or decommissioning of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road 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 (determination of questions of disputed compensation) of the 1961 Act.

Traffic regulation

20.—(1) Subject to the provisions of this article the undertaker may at any time for the purposes of, or in connection with, the construction, maintenance, operation or decommissioning of the authorised development, temporarily place traffic signs and signals in the extents of the roads specified in column (2) of the table in Schedule 8 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 (powers and duties of authorities as to placing of traffic signs) of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**a**).

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the construction or decommissioning of the authorised development—

(a) as to the speed at which vehicles may proceed along any road;

(b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;

(c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;

(d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and

(e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(**a**) S.I. 2016/362.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**a**) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

(a) consult with the chief officer of police in whose area the road is situated; and

(b) obtain the written consent of the traffic authority, such consent not to be unreasonably withheld.

(5) The undertaker must not exercise the powers in paragraphs (1) or (2) unless it has—

(a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspapers circulating in the area in which any road to which the provision relates is situated.

(6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (2).

(7) Any provision made by the undertaker under paragraphs (1) or (2)—

(a) must be made by written instrument in such form as the undertaker considers appropriate;

(b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and

(c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(**b**) (road traffic contraventions subject to civil enforcement).

PART 4

Supplemental powers

Discharge of water

21.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may inspect, lay down, take up and alter pipes and drains and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to paragraph (1) except—

(**a**) S.I. 2011/935.
(**b**) 2004 c. 18.
(**c**) 1991 c. 56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c. 37) and section 32, Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 c. 29.

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior written consent of Natural Resources Wales.

(6) The undertaker must, unless otherwise authorised under the provisions of this Order or any environmental permit relating to the discharge of water in connection with the authorised development, take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 (requirement for environmental permit) of the 2016 Regulations.

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, Natural Resources Wales, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the 2016 Regulations have the same meaning as in those Regulations.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 42 days of receiving an application for consent under paragraph (3) or approval under paragraph 21(4)(a) that person is deemed to have granted consent or given approval, as the case may be.

Maintenance of drainage works

22.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article "drainage" has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(**a**).

Authority to survey and investigate the land

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

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes bore holes or pits in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out environmental, utility or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes or bore holes.

(2) The power conferred by paragraph 23(1)(c) includes without prejudice to the generality of that paragraph the power to take, and process, samples of or from any of the following found on, in or over the land—

(**a**) 1991 c. 59.

(a) water;

(b) air;

(c) soil or rock;

(d) its flora;

(e) bodily excretions, or dead bodies, of non-human creatures; or

(f) any non-living thing present as a result of human action.

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

(4) 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 their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes, bore holes or pits.

(5) No trial holes bore holes or pits are to be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

which authority may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld or delayed.

(6) As soon as reasonably practicable following the completion of any activities carried out under paragraph (1), the undertaker must remove any apparatus and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, as if it were a dispute under Part 1 (determination of question of disputed compensation) of the 1961 Act.

(8) If either a highway authority or a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision within 42 days of receiving the application for consent, that authority is deemed to have granted consent.

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

Protective work to buildings

24.—(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 or adjacent to the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out or maintenance in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development 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 development first becomes operational.

(3) For the purpose of determining how the powers 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, and place on, leave on and remove from the building any apparatus and equipment for use in connected with the survey.

(4) For the purpose of carrying out or maintaining protective works to a building under this article, 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 that 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 power under paragraph (1) to carry out protective works to a building;

(b) a power under paragraph (3) to enter a building and land within its curtilage;

(c) a power under paragraph 24(4)(a) to enter a building and land within its curtilage; or

(d) a power under paragraph 24(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 14 days' notice of its intention to exercise the power and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph 24(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 of 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 powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

(a) protective works to a building are carried out under this article; and

(b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building first becomes operational it appears that the protective works are inadequate to protect the building against damage caused by the carrying out, maintenance or use of that part of the authorised development,

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

(12) In this article "protective works", in relation to a building, means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the carrying out, maintenance or use of the authorised development;

(b) any works the purpose of which is to remedy any damage that has been caused to the building by the carrying out, maintenance or use of the authorised development; and

(c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk to such operation being disrupted.

PART 5

Powers of Acquisition

Compulsory acquisition of land

25.—(1) The undertaker may

(a) acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it or as is incidental to it; and

(b) use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) This article is subject to article 26 (time limit for exercise of authority to acquire land compulsorily), article 27(2) (compulsory acquisition of rights and restrictive covenants) and article 36(8) (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

26.—(1) After the end of the period of 5 years beginning on the day on which this Order is made (and subject to article 34 (modification of Part 1 of the 1965 Act) and article 31 (application of the 1981 Act))—

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act(**a**) as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 36 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1) , except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and restrictive covenants

27.—(1) Subject to the provisions of this article, the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) Subject to the provisions of this article, articles 30 (private rights) and 38 (statutory undertakers) in the case of the Order land specified in column (2) of Schedule 9 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of new rights in the land or the imposition of restrictive covenants under paragraph 26(1) as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, and 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 10 (modification of compensation and compulsory purchase enactments for creation of new rights) to the 1965 Act), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 10 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory

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(**a**) Section 4 was amended by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph 26(1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question other than in respect of the persons listed in article 8 (consent to transfer benefit of Order) where no such consent is required.

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

Statutory authority to override easements and other rights

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

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to use of land arising by virtue of contract.

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

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to use of land arising by virtue of contract, caused by the carrying out, maintenance or use of the authorised development and the operation of section 158 of the 2008 Act.

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

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

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

Compulsory acquisition of land: minerals

29. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**a**) are incorporated in this Order, subject to the following modifications—

(a) paragraph 8(3) is not incorporated;

(b) for "acquiring authority" substitute "undertaker";

(c) for "undertaking" substitute "authorised development"; and

(d) for "compulsory purchase order" substitute "this Order".

Private rights

30.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 25 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 25.

(**a**) 1981 c. 67.

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act(**a**),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 27 (compulsory acquisition of rights and restrictive covenants) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

(a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, 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 restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined as if it were a 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 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 38 (statutory undertakers) 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 rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of the land;

(iii) the undertaker's entry onto the land; or

(iv) the undertaker taking temporary possession of the land,

that any or all of those paragraphs do not apply to any right specified in the notice; or

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in sub-paragraph 30(6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(**a**) Section 11(1) was amended by sections 186 to 188 of the Housing and Planning Act 2016 (c.22), Schedule 4 to the Acquisition of Land Act 1981 (c. 67).

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the 1981 Act

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

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

(3) In section 1 (application of Act) for subsection (2) substitute—

"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order."

(4) For section 4(1) (execution of declaration), substitute—

"(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are authorised to acquire for the benefit of a statutory undertaker or local authority, in the statutory undertaker or local authority in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 is completed).".

(5) In section 5(2) (earliest date for execution of declaration)(**a**) omit the words from ", and this subsection" to the end.

(6) Omit section 5A (time limit for general vesting declaration)(**b**).

(7) In section 5B(1) (extension of time limit during challenge)(**c**)—

(a) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)"; and

(b) for "the three year period mentioned in section 5A" substitute "the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of The Connah's Quay Low Carbon Power Order 202*".

(8) In section 6 (notices after execution of declaration)(**d**) in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134 of the Planning Act 2008".

(9) In section 7 (constructive notice to treat)(**e**) in subsection (1)(a) omit "(as modified by section 4 of the Acquisition of Land Act 1981)".

(10) In section 8 (vesting, and right to enter and take possession)(**f**), after subsection (3), insert—

"(4) In this section references to the acquiring authority include any statutory undertaker or local authority referred to in section 4(1).".

(11) In section 10(1) (acquiring authority's liability arising on vesting of the land), after "vested in an acquiring authority" insert "or a statutory undertaker or local authority".

(12) For section 11(1) (recovery of compensation overpaid)(**g**), substitute—

"(1) This section applies where after the execution of a general vesting declaration a person ("the claimant") claims compensation in respect of the acquisition of an interest in

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(**a**) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016.
(**b**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.
(**c**) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.
(**d**) Section 6 was amended by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).
(**e**) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016.
(**f**) Section 8 was amended by paragraph 4 of Schedule 18 to the Housing and Planning Act 2016 and section 186(3) of the Levelling-up and Regeneration Act 2023 (c. 55).
(**g**) Section 11 was amended by paragraph 52(3) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.".

(13) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(**a**), for paragraph 1(2) substitute—

"(1) But see article 33(4)(acquisition of subsoil or airspace only) of the Connah's Quay Low Carbon Power Order 202*, which excludes the acquisition of subsoil or airspace only from this Schedule.".

(14) References to the 1965 Act in the 1981 Act are to be constructed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 34 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of the land under this Order.

Modification of the 2017 Regulations

32.—(1) Schedule 1 to the 2017 Regulations is modified as follows.

(2) In paragraph (3) of Form 1, after "from the date on which the service of notices required by section 6 of the Act is completed", insert—

"(1A) The [insert land or rights or both] described in Part [ ] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto vests in the statutory undertaker or local authority in question as from the end of the period of [insert period of 3 months or longer] from the date on which the service of notices required by section 6 of the Act is completed.".

(3) References in Form 2 to "in themselves" is substituted with "in themselves and any identified third parties".

(4) In paragraph (b) of the notes on use of Form 2—

(a) after "Insert the name of the authority" insert "and where the context requires insert a reference to third parties"; and

(b) omit "Thereafter rely on that definition wherever "(b)" appears in the text.".

Acquisition of subsoil or airspace only

33.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph 25(1) of article 25 (compulsory acquisition of land) and paragraph 27(1) of article 27 (compulsory acquisition of rights and restrictive covenants) 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 or airspace of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 31 (application of the 1981 Act) or paragraph 4(8) of Schedule 10 (modification of compensation and compulsory purchase enactments for creation of new rights) as the case may be) from applying where the undertaker acquires any part of, or rights in a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(4) 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 to the 1965 Act (as modified by article 34 (modification of Part 1 of the 1965 Act);

(**a**) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

Modification of Part 1 of the 1965 Act

34.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 (application to High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981, the three year period mentioned in section 4" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the 5 year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the Connah's Quay Low Carbon Power Order 202*".

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

(a) in subsection (1)(a), after "land" insert "under that provision"; and

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (interests omitted from purchase), for "section 4 of this Act" substitute "article 26 (time limit for exercise of authority to acquire land compulsorily) of the Connah's Quay Low Carbon Power Order 202*".

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

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

"(2) But see article 33(3) (acquisition of subsoil or airspace only) of The Connah's Quay Low Carbon Power Order 202* which excludes the acquisition of subsoil or airspace only from this Schedule."; and

(b) at the end insert—

"PART 4

"INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 24 (protective work to buildings), article 36 (temporary use of land for carrying out the authorised development) or article 37 (temporary use of land for maintaining the authorised development) of The Connah's Quay Low Carbon Power Order 202*.".

Rights under or over streets

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

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

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

(a) any subway or underground building; or

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

36.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 26 (time limit for exercise of authority to acquire land compulsorily)—

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Part 1 of Schedule 11 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;

(ii) the land specified in columns (1) and (2) of Part 2 Schedule 11 (land of which only temporary possession for access may be taken) for the purposes of taking access to and from the authorised development only; and

(iii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

(b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;

(c) construct temporary works (including the provision of means of access), structures and buildings on that land;

(d) use the land for the purposes of a working site with access to the working site in connection with the authorised development;

(e) construct any permanent works specified in relation to that land in column (4) of Part 1 of Schedule 11 (land of which only temporary possession may be taken), or any other mitigation works in connection with the authorised development;

(f) construct any works, or use the land, as specified in relation to that land in column (3) of Parts 1 and 2 of Schedule 11 (land of which only temporary possession may be taken), or any mitigation works;

(g) construct such works on that land referred to in sub-paragraph (a) as are mentioned in Schedule 1 (authorised development); and

(h) carry out mitigation works required pursuant to the requirements in Part 1 of Schedule 2 (requirements).

(2) Not less than 3 months before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph 36(1)(a)(iii).

(3) The undertaker must not, remain in possession of the land under this article for longer than is reasonably necessary and in any event, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph 36(1)(a)(i) and (ii), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Parts 1 and 2 of Schedule 11 (land of which only temporary possession may be taken); or

(b) in the case of any land referred to in paragraph 36(1)(a)(i), after the end of the period of one year beginning with the date of completion of the work 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 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11(powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, 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, or structure removed under this article;

(b) remove any drainage works installed by the undertaker under this article;

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to streets works);

(d) restore the land on which any permanent works (including ground strengthening works) have been constructed under paragraph (1); or

(e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(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 as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph 36(1)(a)(i) and (ii) except that the undertaker is not to be precluded from acquiring new rights over any part of that land under article 27 (compulsory acquisition of rights and restrictive covenants).

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

(10) Section 13(**a**) (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 compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Paragraph (1) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 25 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights and restrictive covenants).

Temporary use of land for maintaining the authorised development

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

(**a**) Section 13 was amended by Tribunals Courts and Enforcement Act 2007 (c. 15).

(a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

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

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) In this article "the maintenance period" means the period of five years beginning with the date which that part of the authorised development is first operational except in respect of any part of the authorised development which is comprised of landscaping where "the maintenance period means such period as set out in the LEMP which is approved by the relevant planning authority pursuant to paragraph 10 of Part 1 of Schedule 2 (requirements) beginning with the date on which that part of the landscaping is completed.

(12) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

Statutory undertakers

38.—(1) Subject to the provisions of article 44 (protective provisions) and Schedule 13 (protective provisions), the undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers within the Order land and described in the book of reference;

(b) acquire compulsorily existing rights, create and acquire new rights and impose restrictive covenants over the land belonging to statutory undertakers within the Order land and described in the book of reference;

(c) extinguish or suspend the rights of, remove, alter, renew, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order land; and

(d) construct the authorised development in such a way as to interfere with any highway or cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order land.

Recovery of costs of new connections

39.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 38 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 38 (statutory undertakers), 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,

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

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this paragraph—

(a) "public communications provider" has the same meaning as in section 151(1) (interpretation of Chapter 1) of the 2003 Act(**a**); and

(b) "public utility undertaker" means a gas, water, electricity or sewerage undertaker.

Use of subsoil and airspace within the Order limits

40.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any land (including without limitation any street) within the Order limits as may be required for the authorised development and may use the subsoil or airspace for those purposes or any other purposes ancillary to the authorised development.

(2) The undertaker may exercise any power conferred by paragraph (1) in relation to land without being required to acquire any part of the land or any easement or right in the land.

(3) Paragraph (1) does not apply in relation to—

(a) any subway or underground building; or

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and

(**a**) 2003 c. 21.

who suffers loss as a result, 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) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

PART 6

Miscellaneous and general

Application of landlord and tenant law

41.—(1) This article applies to any agreement entered into by the undertaker under article 7 (benefit of the Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(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) No enactment or rule of law to which paragraph (2) applies is to apply 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.

Felling or lopping of trees and removal of hedgerows

42.—(1) Subject to paragraphs (2) and (6), the undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

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

(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 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may for the purposes of the authorised development remove those parts of the hedgerows within the Order limits and specified in Schedule 12 (removal of hedgerows).

(5) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerow Regulations 1997(**a**).

(**a**) S.I. 1997/1160.

(6) The undertaker may fell or lop any tree that is subject to a tree preservation order within or overhanging land within the Order limits or cut back its roots if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development.

(7) In carrying out any activity authorised by paragraph (6)—

(a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(8) The authority given by paragraph (6) constitutes a deemed consent under the relevant tree preservation order.

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

Crown rights

43.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Protective provisions

44. Schedule 13 (protective provisions) has effect.

Operational land for the purposes of the 1990 Act

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

Certification of plans, etc.

46.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table in Schedule 14 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) A plan or 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;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (2) is, if that person 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, the last known address of that person at the time of service.

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

(a) addressing it to that person by 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 to be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

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

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

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

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

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

(**a**) 1978 c. 30.

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

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

No double recovery

48. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Arbitration

49.—(1) Any difference under any provision of this Order, unless otherwise provided for, is be referred to and settled in arbitration in accordance with the rules at Schedule 15 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Temporary interference with river Dee and Public rights of navigation

50.—(1) The undertaker may in connection with the construction, maintenance, operation and decommissioning of the authorised development (and subject to Part 4 of Schedule 13 (protective provisions))—

(a) temporarily interfere with the river, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;

(b) temporarily moor or anchor barges or other vessels or craft in the river;

(c) temporarily close any part of the river within the Order limits to navigation; and

(d) load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials within the Order limits in connection with the construction, maintenance, operation or decommissioning of the authorised development.

(2) The power conferred by paragraph 50(1)(c) must be exercised in a way which secures—

(a) that no more of the river is closed to navigation at any time than is necessary in the circumstances; and

(b) that if complete closure of a part of the river to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.

(3) Any person who, as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private right of navigation is entitled to compensation to be paid by the undertaker to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of human remains

51.—(1) Before the undertaker carries out any development or works which will or may disturb any known human remains within the Order limits it must remove those human remains from the Order limits, or cause them to be removed, in accordance with the following provisions of this article.

(2) Subject to paragraph (11), before any such remains are removed from the Order limits the undertaker must give notice of the intended removal, describing the Order limits and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place within or near the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred within the Order limits may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable alter such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains within the Order limits; or

(b) such notice is given and no application is made under paragraph (6) within 56 days alter the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but the person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) No notice is required under paragraph (2) before the removal of any human remains where the undertaker is satisfied—

(a) that the remains were interred more than 100 years ago; and

(b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(12) In this article references to a relative of the deceased are to a person who—

(a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or

(b) is, or is a child of, a brother, sister, uncle or aunt of the deceased; or

(c) is the lawful executor of the estate of the deceased; or

(d) is the lawful administrator of the estate of the deceased.

(13) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(14) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(15) Section 25 (Offence of removal of body from burial ground) of the Burial Act 1857(**a**) shall not apply to a removal carried out in accordance with this article.

(16) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(**b**) do not apply to the authorised development.

Guarantees in respect of payment of compensation

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

(a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or

(b) an alternative form of security, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

(a) article 25 (compulsory acquisition of land);

(b) article 27 (compulsory acquisition of rights and restrictive covenants);

(c) article 30 (private rights);

(d) article 33 (acquisition of subsoil and airspace only);

(e) article 36 (temporary use of land for carrying out the authorised development);

(f) article 37 (temporary use of land for maintaining the authorised development); and

(g) article 38 (statutory undertakers).

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

(**a**) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014, section 2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077, paragraphs 1 and 2).

(**b**) S.I. 1950/792.

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

Procedure in relation to certain approvals etc.

53.—(1) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Part 2 of Schedule 2 (applications made under requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

Signatory text

Name
Address — Parliamentary Under Secretary of State
Date — Department for Energy Security and Net Zero

SCHEDULE 1

Article 2

Authorised development

In the administrative area of Flintshire County Council, a nationally significant infrastructure project as defined in sections 14(1)(a) (Nationally significant infrastructure projects: general), 15(1) and 15(3A) (Generating stations) of the 2008 Act(**a**), and associated development under section 115(1)(b) and (4A) (Development for which development consent may be granted) of the 2008 Act, including—

Work No. 1

1. An electricity generating station of more than 350 megawatts net electrical output, located on land at the Connah's Quay Power Station Site, Kelsterton Road, north-west of Connah's Quay, Flintshire, north-east Wales, including—

(a) up to two combined cycle gas turbine plants, each including—
  (i) a combined cycle gas turbine;
  (ii) a steam turbine with condenser;
  (iii) gas and steam turbine buildings;
  (iv) heat recovery steam generator;
  (v) gas turbine air intake filters;
  (vi) emissions stacks;
  (vii) heat recovery steam generator stacks;
  (viii) transformers;
  (ix) auxiliaries building;
  (x) deaerator and feed water pump house buildings;
  (xi) nitrogen oxide emissions control equipment and selective catalytic reduction equipment and chemical storage;
  (xii) chemical sampling / dosing plants;

(**a**) 2008 c. 29.

(xiii) continuous emissions monitoring system; and

(xiv) electrical substation, including electrical equipment, buildings and enclosures;

(b) up to two carbon dioxide capture plants, each including—

(i) flue gas pre-treatment plant, including cooling and scrubbing plant and flue gas blower;

(ii) carbon dioxide absorber units and associated stacks;

(iii) carbon dioxide stripper and solvent regenerator;

(iv) continuous emissions monitoring system;

(v) ammonia emissions monitoring and control equipment and associated chemical and solvent storage; and

(vi) carbon dioxide conditioning and compression plant;

(c) combined cycle gas turbine and carbon dioxide capture plant cooling and utilities infrastructure, including—

(i) mechanical draft cooling towers;

(ii) cooling water pumps, plant and buildings;

(iii) cooling water dosing and sampling plant and buildings;

(iv) air cooling equipment;

(v) connections between cooling and utilities infrastructure and existing storage ponds; and

(vi) modification of existing storage and settlement ponds;

(d) natural gas reception facility, including—

(i) above and below ground valves, flanges and pipework;

(ii) gas supply pipeline connection works;

(iii) gas receiving area;

(iv) gas de-compression equipment and maintenance building and PIG launcher;

(v) an above or below ground isolation valve;

(vi) gas vents;

(vii) gas metering, dehydration and pressure reduction equipment;

(viii) telemetry equipment kiosks; and

(ix) standby generator sockets;

(e) a carbon dioxide interface facility, including—

(i) electrical transformer;

(ii) cathodic protection measures;

(iii) PIG launcher and receiver facilities;

(iv) isolation valves;

(v) connection points;

(vi) analyser house;

(vii) control mechanisms;

(viii) below ground pipework;

(ix) above ground control boxes; and

(x) below ground cables and cable ducts;

(f) administration, control room and stores, including—

(i) administration and control buildings; and

(ii) workshop and stores buildings;

(g) demolition of existing buildings and structures including the existing gas treatment plant;

(h) demolition of the existing ENI AGI;

(i) ancillary works, including—

(i) acoustic fencing;

(ii) ancillary plant, equipment, buildings, enclosures and structures;

(iii) auxiliary boiler;

(iv) emergency diesel generators and bunded diesel storage tanks;

(v) chemical storage facilities;

(vi) demineralised water treatment plant, including storage tank;

(vii) potable water storage tank;

(viii) firefighting equipment, buildings and distribution pipework;

(ix) fire storage tanks;

(x) fire water retention basin;

(xi) gatehouses;

(xii) hardstanding;

(xiii) heating, ventilation, and air conditioning equipment, buildings, and distribution pipework;

(xiv) instrumentation and electrical kiosks;

(xv) internal access roads and public rights of way;

(xvi) lighting;

(xvii) lubrication oils storage facilities;

(xviii) mechanical, electrical, gas, telecommunications and water networks, pipework, pipe runs, cables, racks, infrastructure, instrumentation and utilities, including connections between works within this Schedule;

(xix) pipework, pipe runs and pipe racks;

(xx) pumps;

(xxi) heat exchangers;

(xxii) permanent plant laydown areas for operation and maintenance activities;

(xxiii) parking areas (including electric vehicle chargers);

(xxiv) raw water storage tanks; and

(xxv) waste water treatment facilities.

Work No. 2

2. Infrastructure connection works, including—

(a) works to connect to an existing high pressure gas supply pipeline running within the existing power station site and additional AGI components within a new compound for apparatus comprising—

(i) an offtake connection from the existing power station's connection to the National Transmission System;

(ii) above and below ground valves, flanges and pipework;

(iii) an above or below ground remotely operated valve;

(iv) an above or below ground remotely operated valve bypass;

(v) an above or below ground pressurisation bridle;

(vi) instrumentation and electrical kiosks;

(vii) gas metering equipment;

(viii) PIG receiving facility;

(ix) telemetry equipment kiosks and communications equipment;

(x) electrical and telecommunications connections to Work No. 1; and

(xi) natural gas compression equipment;

(b) electrical connection works for the export and import of electricity to and from national electricity transmission networks and the import of electricity from district electricity transmission networks, including—

(i) up to 400 kilovolt overground and underground electrical cables and control systems cables running from Work No. 1 to switch disconnectors; and

(ii) up to 132 kilovolt underground electrical cables running from Work No. 1 to switch disconnectors;

(c) towns water connections to supply towns water to Work No. 1 from the supply point north of Kelsterton Road including works to the existing towns water pipelines, replacement and new water pipelines; and

(d) cooling water connections to supply cooling water to Work No. 1 from Work No. 3.

Work No. 3

3. Water supply connection works to provide cooling water to Work No. 1 and discharge used cooling water and treated process water, including works to the existing cooling water supply and discharge pipelines running between Work No. 1 and the existing intake structures within the river Dee between the existing concrete manifold and existing protection structure, including—

(a) replacement of eel screens;

(b) works from inside of the existing cooling water supply pipelines;

(c) creation of a pedestrian access route;

(d) plant and power supply housed within a moored vessel; and

(e) repairs to or replacement of existing concrete, timbers, metalwork, and other aspects of the existing intake(s) and outfall(s), concrete manifold, protection/hazard structure(s), and pipework.

Work No. 4

4. Temporary construction and laydown areas, including—

(a) hard standing;

(b) accesses, roads and pedestrian and cycle routes and facilities;

(c) earthworks and levelling;

(d) laydown and open storage areas;

(e) contractor compounds and construction staff welfare facilities;

(f) pedestrian routes;

(g) surface water drainage; and

(h) gatehouse and weighbridge.

Work No. 5

5. Construction of a surface water discharge.

Work No. 6

6. Electrical connection works for the export and import of electricity to and from national electricity transmission networks and the import of electricity from district electricity transmission networks, including works within the existing National Grid substation.

Work No. 7

7. Construction of an underground carbon dioxide pipeline 422 metres in length and with an external diameter of 24 inches (609.6 millimetres) between Work No. 8 and the existing pipeline including—

(a) construction and installation of the pipeline, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of an underground telecommunications cable;

(d) construction of a haul road, temporary construction accesses, working areas and laydown area;

(e) landscaping, ecological and environmental works;

(f) works to connect to the existing pipeline; and

(g) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation ponds.

Work No. 8

8. Modification of an AGI at Flint, including—

(a) below ground pipework;

(b) an above ground connection point; and

(c) below ground cables and cable ducts.

Work No. 9

9. The creation and use of a temporary logistics and construction compound for use during the construction of the authorised development, including—

(a) office, welfare and security facilities;

(b) a parking area;

(c) plant and materials storage;

(d) waste processing and management areas; and

(e) fencing and gating.

Work No. 10

10. Works to provide site access including—

(a) creation of accesses from the highway;

(b) creation of visibility splays;

(c) upgrading and repairing of existing accesses and private tracks, including levelling and clearance, surfacing, drainage and strengthening works, barriers and enclosures;

(d) highways improvements; and

(e) modification of access from the highway to facilitate Work Nos. 7, 8 and 9.

Work No. 11

11. Accommodation works to facilitate haulage route access, including the temporary removal of a gate and fence adjacent to the railway and subsequent reinstatement.

Work No. 12

12. Re-establishment and use of waterborne transport offloading facilities at Connah's Quay North (known as the Corus Jetty) south of Flintshire Bridge and temporary accommodation works to facilitate haulage on existing roads between Connah's Quay North and Work No. 1, including—

(a) right for berthing of a vessel and to connect to existing moorings at Connah's Quay North;

(b) the inspection and repair of the existing jetty not overhanging the river Dee, and temporary placement of mobile cranes including the temporary oversailing of crane arms above the river Dee to facilitate offloading or placement of ramps above the river Dee to facilitate offloading;

(c) use of the river bed of the river Dee for the mooring of vessels and craft at the waterborne transport offloading area at lower tide; and

(d) accommodation works to facilitate haulage route access.

Work No. 13

13. Landscaping, biodiversity enhancement measures and boundary treatment including—

(a) soft landscaping including planting and biodiversity enhancement measures; and

(b) security fencing, gates, boundary treatment and other means of enclosure.

Site wide works

14. In connection with and in addition to Works Nos. 1 to 13, further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development which are not likely to give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, including—

(a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;

(b) electrical, gas, potable water supply, foul water drainage, telecommunications infrastructure connections and works to alter the position of such services and utilities connections;

(c) works for the provision or relocation of apparatus including cabling, water and electricity supply works and foul drainage provision;

(d) hard standing and hard landscaping;

(e) soft landscaping, including bunds, vegetation removal, trimming and lopping of trees and hedgerows, alteration of drains and ditches, bunds, embankments, swales, landscaping, embankments and planting;

(f) biodiversity enhancement measures;

(g) works of restoration;

(h) fencing (including security fencing), gates, boundary treatment and means of enclosure;

(i) external lighting, including lighting columns;

(j) gatehouses and weighbridges;

(k) closed circuit television cameras and columns and other security measures;

(l) site clearance, establishment and preparation works (including vegetation removal, demolition of existing buildings and structures);

(m) earthworks (including soil stripping and storage and site levelling and formation of embankments) and excavations (including formation of channels);

(n) diversion, alteration and use of existing culverted watercourses;

(o) works for the protection of buildings and land;

(p) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas;

(q) generators;

(r) concrete batching facilities;

(s) offices and staff welfare facilities;

(t) wheel wash facilities;

(u) signage;

(v) vehicle parking and cycle storage facilities;

(w) accesses, roads, haul routes and pedestrian and cycle routes and facilities;

(x) tunnelling, boring and drilling works and management of arisings;

(y) manholes, marker posts, underground markers, tiles and tape;

(z) remediation works;

(aa) demolition; and

(bb) to the extent that it does not form part of such works, further associated development comprising such other works—

(i) as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development; and

(ii) which fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

Article 2

Requirements

PART 1

Requirements

Interpretation

1.—(1) In this Schedule—

"Airbus" means Airbus or any successor in function;

"Civil Aviation Authority" means the civil aviation authority or any successor in function;

"Connah's Quay North" means the docks and associated facilities located in Connah's Quay and as described more fully in the navigational risk assessment;

"CTMP" means construction traffic management plan;

"curlew mitigation and monitoring plan" means a plan for the delivery of measures to mitigate for the loss of curlew habitat on functionally linked land as a result of the authorised development;

"design principles document" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the

Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"DEMP" means decommissioning environmental management plan;

"discharging authority" means any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 (requirements) of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement;

"curlew mitigation strategy" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"framework construction worker travel plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"framework site waste management plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"greenhouse gas reduction strategy" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"Heneb" means the Trust for Welsh Archaeology incorporated under company number 01198990 and having its registered office at The Corner House, 6 Carmarthen Street, Llandeilo, Dyfed, Wales, SA19 6AE, or any successor in function;

"lighting strategy" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"navigational risk assessment" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"off-site net benefit for biodiversity and green infrastructure strategy" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"operation and maintenance mitigation register" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"outline landscape and ecological management plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"outline surface water drainage strategy" means the document certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans etc.);

"Overarching Written Scheme of Investigation for Terrestrial and Marine Heritage Mitigation" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"marine invasive non-native species outline management plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"parameter plans" means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 46 (certification of plans, etc.);

"requirement consultee" means any body named in a requirement as a body to be consulted by the discharging authority in discharging that requirement;

"stage" means the works, or parts thereof, to be carried out together as a phase of, or in a defined order within, the construction of the authorised development; and

"the Royal Commission on the Ancient and Historical Monuments of Wales" means the Royal Commission on the Ancient and Historical Monuments of Wales or any successor in function.

(2) Where an approval of details or other document is required under the terms of any requirement or where compliance with a document contains the wording "unless otherwise approved" by the discharging authority, such approval of details or of any other document (including any subsequent amendments or revisions) or approval by the discharging authority is not to be given except in relation to changes or deviations where it has been demonstrated to the satisfaction of the discharging authority that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.

Time limits

2.—(1) The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

(2) If any proceedings are begun to challenge the validity of this Order, the period specified in sub-paragraph (1) is extended by—

(a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined; or

(b) if shorter, one year.

(3) An application is not finally determined for the purposes of sub-paragraph 2(2)(a) if an appeal in respect of the application—

(a) could be brought (ignoring any possibility of an appeal out of time with permission); or

(b) has been made and not withdrawn or finally determined.

(4) Notice of commencement of the authorised development must be given to the relevant planning authority no later than 14 days before the date on which the authorised development is intended to be commenced.

Detailed design

3.—(1) In relation to any stage of the authorised development no development of that stage is to commence until details of the following for that stage have been submitted to and approved by the relevant planning authority—

(a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;

(b) finished floor levels;

(c) the height of the stacks which must be at a level at which—

(i) the environmental effects will be no worse than those identified within chapter 8 of the environmental statement; and

(ii) there would be no adverse effect on integrity of any European Site;

(d) hard standing; and

(e) the internal vehicular access and circulation roads, vehicle parking, cycle parking and routes, and pedestrian facilities and routes.

(2) The written details that are submitted for approval pursuant to sub-paragraph (1) must be in general accordance with the design principles document, lighting strategy and parameter plans.

(3) The authorised development must be carried out in accordance with the details approved pursuant to sub-paragraph (1).

Construction environmental management plan

4.—(1) No stage of the authorised development may commence until a CEMP for that stage has been submitted to and approved by the relevant planning authority.

(2) The CEMP must be in general accordance with the framework construction environmental management plan and the lighting strategy and incorporate—

(a) a site waste management plan which is in general accordance with the framework site waste management plan; and

(b) a marine invasive non-native species management plan which is in general accordance with the marine invasive non-native species outline management plan.

(3) Each stage of the authorised development must be carried out in accordance with the approved CEMP for that stage unless otherwise agreed with the relevant planning authority.

(4) Limbs (a), (b), (d), (e), (g), (h), (i) and (j) of the site-enabling works must be carried out in general accordance with the framework construction environmental management plan and the lighting strategy.

Construction traffic management plan

5.—(1) Save in respect of matters approved in accordance with articles 15 (stopping up of streets, public rights of way and rights of navigation) and 16 (temporary restriction of use of streets) no stage of the authorised development may commence until a CTMP for that stage, in general accordance with the framework construction traffic management plan, has been submitted to and approved by the relevant planning authority following consultation with the relevant highway authority.

(2) The CTMP for each stage must be accompanied by a construction worker travel plan in general accordance with the framework construction worker travel plan.

(3) Each stage of the authorised development must be implemented in accordance with the approved CTMP and the construction worker travel plan for that stage.

Surface water drainage

6.—(1) No stage of Work No. 1 may become operational until, for that stage, a surface water drainage strategy for works relevant to that stage, in general accordance with the relevant part of the outline surface water drainage strategy, has been submitted to and approved by the relevant planning authority.

(2) The surface water drainage system for each stage must be implemented in accordance with the approved surface water drainage strategy.

Construction surface and foul water drainage

7.—(1) No stage of the authorised development may commence until details of the temporary surface and foul water drainage systems have, for that stage, been submitted to and approved by the relevant planning authority, in consultation with Natural Resources Wales.

(2) The details submitted pursuant to sub-paragraph (2) must include—

(a) details of the means of pollution control proposed, which must be in accordance with the framework construction environmental management plan; and

(b) a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant stage of the authorised development.

(3) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) Details of the permanent foul water drainage systems, including a programme for their implementation, must be submitted to and approved by the relevant planning authority, in consultation with Natural Resources Wales, prior to the start of construction of any part of those systems.

(5) The scheme approved pursuant to sub-paragraph (4) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Flood risk mitigation

8.—(1) No stage of the authorised development may commence until a scheme for the mitigation of flood risk during construction and the creation of a suitable development platform for Work No. 1, has been submitted to and approved by the relevant planning authority.

(2) No stage of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that stage, been submitted to and approved by the relevant planning authority in consultation with Natural Resources Wales.

(3) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) The scheme approved pursuant to sub-paragraph (2) must be implemented as approved and adhered to throughout the commissioning and operation of the authorised development unless otherwise agreed with the relevant planning authority.

Archaeology

9.—(1) The authorised development must be implemented in accordance with the Overarching Written Scheme of Investigation for Terrestrial and Marine Heritage Mitigation.

(2) No stage of the authorised development with the potential to affect buried archaeological assets may commence until a written scheme for the investigation of areas of archaeological interest relevant to that stage (if any) as identified in the Overarching Written Scheme of Investigation for Terrestrial and Marine Heritage Mitigation has been submitted to and approved by the relevant planning authority following consultation with the Royal Commission on the Ancient and Historical Monuments of Wales and Heneb.

(3) The scheme approved under sub-paragraph (2) must be in general accordance with the Overarching Written Scheme of Investigation for Terrestrial and Marine Heritage Mitigation, and identify the measures to be taken to investigate, protect, record or preserve any significant archaeological remains that may be found.

(4) Any archaeological works carried out under a scheme approved under sub-paragraph (2) must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(5) Any archaeological works must be implemented in accordance with the approved scheme.

Landscape and ecological management plan

10.—(1) Subject to sub-paragraph (3), no stage of the authorised development must commence until a LEMP for that stage, in general accordance with the outline landscape and ecological management plan, has been submitted to and approved by the relevant planning authority.

(2) Each stage of the authorised development must be implemented in accordance with the approved LEMP for that stage.

(3) Sub-paragraph (1) only applies to those stages of the authorised development in respect of which any landscape and ecological management measures are to be implemented by the undertaker, as identified in the outline landscape and ecological management plan.

Curlew mitigation and monitoring plan

11.—(1) No stage of Work No. 1 or any site clearance works required in connection with Work No. 1 may commence until a curlew mitigation and monitoring plan has been submitted to and approved by the relevant planning authority, in consultation with Natural Resources Wales.

(2) The curlew mitigation and monitoring plan must be in general accordance with the curlew mitigation strategy and include the following—

(a) details of the aims and objectives of the plan;

(b) details of the location of replacement curlew habitat and any features, landscaping and planting thereof;

(c) details of any water management measures;

(d) details of habitat monitoring and management to meet the aims and objectives of the plan; and

(e) an implementation timetable demonstrating that replacement curlew habitat will be available before removal or disturbance of curlew habitat on functionally linked land as a result of the authorised development.

(3) The curlew mitigation and monitoring plan must be implemented as approved and maintained for the lifetime of the authorised development.

Control of noise - operation

12.—(1) No stage of Work No. 1 may be brought into commercial use until a scheme for management and monitoring of noise during the operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must comply with the limits on noise from the operation of the authorised development contained within the design principles document.

(3) The scheme must be implemented as approved and maintained for the duration of the operation of the authorised development unless in an emergency or otherwise agreed with the relevant planning authority.

Operational and maintenance environmental management plan

13.—(1) The undertaker must, prior to operation of the authorised development, submit to the relevant planning authority for approval the operational and maintenance environment management plan (or plans) which details the monitoring and management requirements of the authorised development, including post-construction monitoring.

(2) The operational and maintenance environment management plan(s) submitted under sub-paragraph (1) must be in general accordance with the operation and maintenance mitigation register, and developed having regard to the approved LEMP(s) and the lighting strategy.

(3) Operation of the authorised development must be implemented in accordance with the approved operational and maintenance environment management plan(s).

Aviation warning lighting

14.—(1) No stage of Work No. 1(a) or (b) may commence until details of the timetable for construction and retention of tall structures or the placement and retention of mobile cranes and

the specification and installation timetable for aviation warning lighting for that stage during construction and operation have been submitted to and approved by the relevant planning authority following consultation with the Civil Aviation Authority and Airbus.

(2) The details submitted pursuant to sub-paragraph (1) must be in general accordance with the lighting strategy.

(3) Work No. 1(a) and (b) must be operated and maintained in accordance with the details approved pursuant to sub-paragraph (1).

Air safety

15.—(1) No stage of Work No. 1(a) or (b) may commence until details of the heights of structures and temporary cranes and other information that is required by Civil Aviation Authority and Airbus to chart the site for aviation purposes for that stage have been submitted to and approved by the relevant planning authority, following consultation with the Civil Aviation Authority and Airbus.

(2) The details submitted pursuant to sub-paragraph (1) must be in general accordance with the framework construction environmental management plan.

(3) The details approved pursuant to sub-paragraph (1) must thereafter be implemented, operated and maintained in accordance with the approved details.

Greenhouse gas reduction strategy

16.—(1) The construction, operation (including maintenance) and decommissioning of Work No. 1 must be undertaken in accordance with the objectives of the greenhouse gas reduction strategy, unless otherwise agreed with the relevant planning authority.

Decommissioning environmental management plan

17.—(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority a DEMP for its approval.

(2) No decommissioning works may be carried out until the relevant planning authority has approved the DEMP.

(3) The DEMP must be implemented and maintained for the duration of the decommissioning of the authorised development as approved unless otherwise agreed with the relevant planning authority.

Net benefit for biodiversity

18.—(1) The authorised development must not commence until a scheme securing the provision of net benefit for biodiversity for the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme to be approved pursuant to sub-paragraph (1) must be in general accordance with the outline landscape and ecological management plan and off-site net benefit for biodiversity and green infrastructure strategy.

(3) The authorised development must be carried out in accordance with the approved scheme.

Abnormal indivisible loads

19.—(1) The transport of abnormal indivisible loads in connection with the construction of the authorised development must not commence until a detailed abnormal indivisible load risk assessment and method statement have been prepared by the undertaker.

(2) The transport of abnormal indivisible loads in connection with the construction of the authorised development must be carried out in accordance with the detailed abnormal indivisible load risk assessment and method statement.

(3) If the undertaker determines that Connah's Quay North is to be used as a landside delivery point for the transport of abnormal indivisible loads to facilitate the construction of the authorised development, no transport of abnormal indivisible loads from Connah's Quay North may commence until an updated navigational risk assessment has been prepared, in consultation with the Dee Conservancy.

(4) The updated navigational risk assessment approved pursuant to sub-paragraph (3) must be in general accordance with the navigational risk assessment, unless otherwise agreed with the Dee Conservancy.

Written approval

20. Where under any of the requirements the approval or agreement of the relevant planning authority or another person or authority is required, that approval or agreement must be given in writing.

Amendments to approved details

21.—(1) With respect to the documents certified in accordance with article 46 (certification of plans, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the "Approved Documents, Plans, Details or Schemes"), the undertaker may submit to the relevant planning authority for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the relevant planning authority, the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Anticipatory steps towards compliance with any requirement

22. If, before the coming into force of this Order, the undertaker or any other person has taken any steps towards compliance with any provision of Part 1 (requirements) of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

PART 2

Applications made under requirements

23.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval under a requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of 35 days beginning with—

(a) where no further information is requested under paragraph 24, the day immediately following that on which the application is received by the authority;

(b) where further information is requested under paragraph 24, the day immediately following that on which further information has been supplied by the undertaker; or

(c) such longer period as may be agreed in writing by the undertaker and the discharging authority.

(2) In the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is taken to have granted all parts of the application (without any condition or qualification) at the end of that period unless otherwise agreed in writing.

Further information

24.—(1) Where an application has been made under paragraph 23 the discharging authority may, subject to complying with the requirements of this paragraph, request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(2) If the discharging authority considers that further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the discharging authority must, within 21 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 10 business days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 10 business days of receipt of such a request and in any event within 20 business days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) If the discharging authority does not give the notification specified in sub-paragraphs (2) or (3) or such longer period as may be agreed in writing by the undertaker and the discharging authority, or otherwise fails to request any further information within the timescales provided for in this paragraph, it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 23.

Fees

25.—(1) Unless otherwise agreed with the relevant planning authority, where an application or a request for comments is made to a relevant planning authority for any consent, agreement or approval required by a requirement, a fee must be paid to the relevant planning authority as follows—

(a) such fee as may be prescribed (under sections 303 and 333(2A) of the 1990 Act for the discharge of conditions attached to a planning permission); or

(b) a fee of £117 per application or request.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 35 days of—

(a) the application or request being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application or to provide written comments within 56 days from the date on which the application is received, or such longer period as may be agreed in writing under paragraph 23, unless within that period the undertaker agrees in writing that the fee may be retained by the relevant planning authority and credited in respect of a future application or a future request for comments.

Appeals

26.—(1) The undertaker may appeal if—

(a) the discharging authority refuses an application for—

(i) any consent, agreement or approval required by a requirement or any document referred to in any requirement; or

(ii) any other consent, agreement or approval required under this Order, or grants it subject to conditions to which the undertaker objects;

(b) having received a request for further information under paragraph 24 the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

(c) having received any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The procedure for appeals is as follows—

(a) the undertaker must submit to the Secretary of State, a copy of the application submitted to the discharging authority and any supporting documents which the undertaker may wish to provide ("the appeal documents");

(b) the undertaker must on the same day provide copies of the appeal documents to the discharging authority and the requirement consultee (if applicable);

(c) the Secretary of State must appoint a person to determine the appeal ("the appointed person") as soon as reasonably practicable after receiving the appeal documentation and notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person must be sent;

(d) the discharging authority and the requirement consultee (if applicable) may submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the appeal parties may make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

Outcome of appeals

27.—(1) On an appeal under paragraph 26, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person under paragraph 26. Been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(3) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review within 6 weeks of the date of the appointed person's decision.

(4) Any consent, agreement or approval given by the appointed person pursuant to this Part of this Schedule is deemed to be an approval for the purpose of Part 1 of this Schedule 2 (requirements) as if it had been given by the discharging authority.

(5) The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(6) Except where a direction is given pursuant to sub-paragraph (7) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(7) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is made, the appointed person must have regard to the Planning Practice Guidance: Appeals (April 2024) or any circular or guidance which may from time to time replace it.

Interpretation

28. In this Part of this Schedule—

"the appeal parties" means the discharging authority, the requirement consultee and the undertaker;

"discharging authority" means the body responsible for giving a consent, agreement or approval under this Schedule; and

"requirement consultee" means any body named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement.

SCHEDULE 3

Article 9

Legislation to be disapplied

1. The following local enactments, orders and byelaws, and any byelaws or other provisions made under any of those enactments, orders or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

(a) Wrexham, Mold and Connah's Quay Railway (Extension) Act 1864(**a**);

(b) Wrexham, Mold and Connah's Quay Railway (Dee Valley Branch) Act 1865(**b**).

(c) Wrexham, Mold and Connah's Quay Railway (Extension) Act 1865(**c**);

(d) Wrexham, Mold and Connah's Quay Railway (Additional Powers) Act 1866(**d**);

(e) Wrexham, Mold and Connah's Quay Railway (Extension of Time) Act 1867(**e**);

(**a**) 1864 c. ccxxxiv.
(**b**) 1865 c. clxxvi.
(**c**) 1865 c. cclxi.
(**d**) 1866 c.ccclviii.

(f) River Dee Company (Amendment) Act 1868(**a**);

(g) Wrexham, Mold and Connah's Quay Railway (Arrangement) Act 1869(**b**);

(h) Wrexham, Mold and Connah's Quay Railway Act 1873(**c**);

(i) Wrexham, Mold and Connah's Quay Railway Act 1882(**d**);

(j) Wrexham, Mold and Connah's Quay Railway Act 1883(**e**);

(k) Wrexham, Mold and Connah's Quay Railway (Capital Arrangements) Act 1883(**f**);

(l) Wrexham, Mold and Connah's Quay Railway Act 1888(**g**);

(m) Dee Conservancy Act 1889(**h**); and

(n) Dee and Clwyd River Authority Act 1973 (**i**).

SCHEDULE 4

Article 12

Streets subject to street works and alteration of layout

PART 1

Streets subject to street works

(1) Area	*(2) Streets subject to street works*	*(3) Description of the street works*
Flintshire County Council	A548 (Rock Hill Junction to Ffynnongroyw Dual, Mostyn)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 01/01 and STR 01/02 on Sheet 1 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill Junction to Isglan Road, Mostyn)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 01/02 and STR 01/03 on Sheet 1 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill to Isglan Road, Mostyn)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 02/01 and STR

(**e**) 1867 c. cc (Regnal. 30 and 31 Vict).
(**a**) 1868 c. xxv (Regnal. 31 and 32 Vict).
(**b**) 1869 c. cliii (Regnal. 32 and 33 Vict)
(**c**) 1873 c. ccxxxii.
(**d**) 1882 c. ccxxxii (Regnal. 45 and 46 Vict)
(**e**) 1883 c. lxv.
(**f**) 1883 c.cviii.
(**g**) 1888 c. lxxvii (Regnal. 51 and 52 Vict).
(**h**) 1889 c. clvi.
(**i**) 1973 c. xxix.

		02/02 on Sheet 2 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill to Isglan Road, Mostyn)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 02/03 and STR 02/04 on Sheet 2 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill to Isglan Road, Mostyn)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 02/05 and STR 02/06 on Sheet 2 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Isglan Junction to B5121 Junction, Greenfield)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 03/01 and STR 03/03 on Sheet 3 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Isglan Road	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching at point STR 03/02 on Sheet 3 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Bagillt Road Roundabout, Bagillt)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching at points STR 04/01, STR 04/02 and STR 04/03 on Sheet 4 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Manor Road Industrial Estate Entrance to Holywell Road, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/01 and STR 05/02 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Holywell Road, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/02 and STR 05/03 on Sheet 5 of the access, streets, rights of way

		and rights of navigation plans.
Flintshire County Council	A548 Holywell Street, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/03 and STR 05/04 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Trelawny Square, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/04 and STR 05/05 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Chester Street, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/05 and STR 06/01 on Sheets 5 and 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Park Avenue, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/06 and STR 05/07 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Borough Grove, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/08 and STR 05/09 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Trelawny Avenue, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/10 and STR 05/11 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Woodfield Avenue, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/12 and STR 05/13 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.

Flintshire County Council	A548 Chester Road, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 06/01 and 06/06 on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Queens Avenue, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 06/02 and STR 06/03 on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Kings Avenue, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 06/04 and STR 06/05 on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Chester Road, Oakenholt	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 06/06, STR 06/07 and STR 06/10 on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Leadbrook Drive	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 06/08 and STR 06/09 on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Allt-Goch Lane, Northop	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 07/01 and STR 07/02 on Sheet 7 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Chester Road Eastbound Carriageway, Oakenholt)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 08/01 and STR 08/06 on Sheet 8 of the access, streets, rights of way and rights of navigation plans.

Flintshire County Council	Access into Connah's Quay Power Station off Kelsterton Road	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 08/02, STR 08/03 and STR 08/04 on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Kelsterton Road, Connah's Quay	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 08/04 and STR 08/05 on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road adjacent to North Road and River Road	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 09/01 and STR 09/02 on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (North Road)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 09/02 and STR 09/05 on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (River Road)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 09/02 and STR 09/03 on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (Coatings Bypass Road)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching at point STR 09/04 on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (British Steel Road)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 09/05 and STR 09/06 on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	British Steel Road, Sealand	Street works to facilitate

		carriageway surface repairs for the length shown in green patterned hatching between points STR 09/06 and STR 10/06 on Sheets 9 and 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Phase 4 Roundbout DIP to B5129, Connah's Quay	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 10/01 and STR 10/02 on Sheet 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Phase 4 Roundabout DIP, Sealand	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 10/02, STR 10/03, STR 10/04 and STR 10/06 on Sheet 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Weighbridge Road, Sealand	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 10/04 and STR 10/05 on Sheet 10 of the access, streets, rights of way and rights of navigation plans.

PART 2

Streets subject to temporary alteration of layout

(1) Area	*(2) Streets subject to alteration of layout*	*(3) Description of alteration of layout*
Flintshire County Council	A548 (Rock Hill Junction to Ffynnongroyw Dual, Mostyn)	Alteration of layout of the A548 (Rock Hill Junction to Ffynnongroyw Dual, Mostyn) in the area depicted in solid green hatching at the points marked ALT 01/01 and ALT 01/02 as shown on Sheet 1 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the Authorised Development
Flintshire County Council	A548 (Bagillt Road Roundabout, Bagillt)	Alteration of layout of the A548 Bagillt Road Roundabout in the area

		depicted in solid green hatching at the points marked ALT 04/01, ALT 04/02 and ALT 04/03 as shown on Sheet 4 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development
Flintshire County Council	A548 Holywell Street, Flint	Alteration of layout of the A548 Holywell Street in the area depicted in solid green hatching between the points marked ALT 05/01 and ALT 05/02 as shown on Sheet 5 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development
Flintshire County Council	A548 Trelawny Square, Flint	Alteration of layout of the A548 Trelawny Square in the area depicted in solid green hatching between the points marked ALT 05/02 and ALT 05/03 as shown on Sheet 5 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development
Flintshire County Council	A548 Chester Road, Oakenholt	Alteration of layout of the A548 Chester Road in the area depicted in solid green hatching between the points marked ALT 06/01, ALT 06/02 and ALT 06/03 as shown on Sheet 6 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	A548 Chester Road Eastbound Carriageway, Oakenholt	Alteration of layout of A548 Chester Road Eastbound Carriageway in the area depicted in solid green hatching near between the points ALT 08/01 and ALT 08/04 as shown on Sheet 8 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Access into Connah's Quay Power Station off Kelsterton	Alteration of layout of Kelsterton Road and adjacent

	Road	roundabout in the area depicted in solid green hatching near the points marked ALT 08/02 and ALT 08/03 as shown on Sheet 8 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Kelsterton Road	Alteration of layout of Kelsterton Road in the area depicted in solid green hatching at the point marked ALT 08/05 as shown on Sheet 8 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Private Road (North Road)	Alteration of layout of North Road, including the adjacent roundabout, in the area depicted in solid green hatching at the points marked ALT 09/01 and ALT 09/03 as shown on Sheet 9 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Private Road (Coatings Bypass Road)	Alteration of layout of Coatings Bypass Road in the area depicted in solid green hatching at the point marked ALT 09/02 as shown on Sheet 9 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Private Road (British Steel Road)	Alteration of layout of British Steel Road in the area depicted in solid green hatching between the points marked ALT 09/03 and ALT 09/04 shown on Sheet 10 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Phase 4 Roundabout DIP To B5129 Westbound, Connahs Quay	Alteration of layout of Phase 4 Roundabout Dip To B5129 Westbound in the area depicted in solid green

		hatching between the points marked ALT 10/01 and ALT 10/02 as shown on Sheet 10 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Phase 4 Roundabout DIP, Sealand	Alteration of layout of Phase 4 Roundabout Dip in the area depicted in solid green hatching between the points marked ALT 10/02, ALT 10/03, ALT 10/04 and ALT 10/06 as shown on Sheet 10 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	A548 Weighbridge Road, Sealand	Alteration of layout of the A548 Weighbridge Road in the area depicted in solid green hatching between the points marked ALT 10/04 and ALT 10/05 as shown on Sheet 10 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development

PART 3

Streets subject to permanent alteration of layout

(1) Area	*(2) Streets subject to alteration of layout*	*(3) Description of alteration of layout*
Flintshire County Council	Allt-Goch Lane, Northop	Alteration of layout of Allt-Goch Lane in the area depicted in solid green hatching between the points ALT 07/01 and ALT 07/02, near the access marked 07/01 as shown on Sheet 7 of the access, streets, rights of way and rights of navigation plans subsequent to creation of new private means of access.

SCHEDULE 5

Article 15

Streets, public rights of way and rights of navigation to be restricted and stopped up

PART 1

Streets, public rights of way and rights of navigation to be temporarily stopped up

(1) Area	*(2) Street, public right of way or right of navigation*	*(3) Extent of stopping up*	*(4) Diversion route*
Flintshire County Council	404/66/20	Public right of way between points PRoW 07/02 and PRoW 07/03 as shown on Sheet 7 of the streets, rights of way, and access plans.	Diversion route between points PRoW 07/02 and PRoW 07/03 as shown on Sheet 7 of the streets, rights of way, and access plans.
Flintshire County Council	River Dee	Public right of navigation between points NAV 09/01 and NAV 09/02 as shown on Sheet 9 of the streets, rights of way, and access plans.	N/A
Flintshire County Council	River Dee	Public right of navigation between points NAV 09/03 and NAV 09/04 as shown on Sheet 9 of the streets, rights of way, and access plans.	N/A

PART 2

Streets, public rights of way and rights of navigation to be temporarily altered or managed

(1) Area	*(2) Street, public right of way or right of navigation*	*(3) Description of management*
Flintshire County Council	404/66/20	Public Right of Way between points PRoW 07/01 and PRoW 07/04 as shown on Sheet 7 of the streets, access and rights of way plans to be temporarily managed and the allowance of temporary use of this Public Right of Way by motor vehicles.

PART 3

Streets, public rights of way and rights of navigation to be permanently stopped up

(1) Area	*(2) Street, public right of way or right of navigation*	*(3) Extent of stopping up*	*(4) Diversion route*
Flintshire County Council	Connah's Quay Power Station	The existing private street between points 08/04 and 08/05 as shown on Sheet 8 of the access, streets, rights of way and rights of navigation plans.	The length shown in yellow hatching between points CRS 08/01 and CRS 08/02 on Sheet 8 of the access, streets, rights of way and rights of navigation plans.

SCHEDULE 6

Article 16

Streets to be temporarily closed or restricted

(1) Area	*(2) Street*	*(3) Description of restriction*
Flintshire County Council	A548 (Rock Hill Junction to Ffynnongroyw Dual, Mostyn)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 1 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill Junction to Isglan Road, Mostyn)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 1 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill Junction to Isglan Road, Mostyn)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the lengths coloured in green patterned hatching on Sheet 2 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Isglan Junction to B5121 Junction, Greenfield)	Temporarily single lane closure to all traffic save for traffic under the direction of

		the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 3 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Isglan Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 3 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Bagillt Road Roundabout, Bagillt)	Temporarily partial closure of the roundabout to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 4 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Manor Road Industrial Estate Entrance to Holywell Road, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in solid green hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Holywell Road, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in solid green hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Holywell Street, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned

		hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Trelawny Square, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Chester Street, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in solid patterned hatching on Sheet 5 and 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Park Avenue, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Borough Grove, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Trelawny Avenue, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Woodfield Avenue, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the

		undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Chester Road, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Chester Road, Oakenholt	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	King's Avenue, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Queen's Avenue, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Leadbrook Drive	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 6 of the access, streets, rights of way and rights of

		navigation plans.
Flintshire County Council	Allt-Goch Lane	Temporarily partial lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 7 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Chester Road Eastbound Carriageway, Oakenholt)	Temporarily lane closures to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Access into Connah's Quay Power Station off Kelsterton Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Kelsterton Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout for the length coloured in solid green hatching on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road adjacent to North Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (North Road)	Temporarily single lane closure to all traffic save for traffic under the direction of

		the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (Coatings Bypass Road)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (River Road)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (British Steel Road)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	British Steel Road, Sealand	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheets 9 and 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Phase 4 Roundbout DIP to B5129, Connah's Quay	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured

		in solid green or patterned hatching on Sheet 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Phase 4 Roundabout DIP, Sealand	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Weighbridge Road, Sealand	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 10 of the access, streets, rights of way and rights of navigation plans.

SCHEDULE 7

Article 17

New means of access

(1) Area	*(2) Street*	*(3) Description of relevant part of access*
Flintshire County Council	Proposed Access off Allt-Goch Lane	Proposed new access to be constructed at the point marked 07/01 on Sheet 7 of the access, streets, rights of way and rights of navigation plans. Access location co-ordinated in conjunction with the HyNet Order.
Flintshire County Council	Proposed Access off Allt-Goch Lane	Existing field access at the point marked 07/03 on Sheet 7 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Proposed Access off Allt-Goch Lane	Existing field access at the point marked 07/03 on Sheet 7 of the access, streets, rights of way and rights of navigation plans. Access location co-ordinated in conjunction with the HyNet Order.
Flintshire County Council	Proposed Access off	Proposed new access to be

	Kelsterton Road, connecting to the A548 Eastbound carriageway.	constructed at the point marked 08/03 on Sheet 8 of the access, streets, rights of way and rights of navigation plans.

SCHEDULE 8

Article 20

Traffic regulation measures

(1) Area	*(2) Extent of temporary traffic signs and signals*
Flintshire County Council	Between the points marked TRM 01-01 and TRM 01-02 on sheet 1 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Ffynnongroyw Dual, Mostyn
Flintshire County Council	Between the points marked TRM 01-02 and TRM 01-03 on sheet 1 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Isglan Road, Mostyn
Flintshire County Council	Between the points marked TRM 02-01 and TRM 02-02 on sheet 2 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Isglan Road, Mostyn
Flintshire County Council	Between the points marked TRM 02-03 and TRM 02-04 on sheet 2 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Isglan Road, Mostyn
Flintshire County Council	Between the points marked TRM 02-05 and TRM 02-06 on sheet 2 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Isglan Road, Mostyn
Flintshire County Council	Between the points marked TRM 03-01 and TRM 03-02 on sheet 3 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Isglan Road, Mostyn
Flintshire County Council	Between the points marked TRM 03-02 and TRM 03-03 on sheet 3 of the Traffic Regulation Measures Plans on the A548 Isglan Junction to B5121 Junction, Greenfield (Mostyn Road)
Flintshire County Council	Between the points marked TRM 04-01 and TRM 04-02 on sheet 4 of the Traffic Regulation Measures Plans on the A548 Bagillt Road Roundabout, Bagillt
Flintshire County Council	Between the points marked TRM 05-01 and TRM 05-02 on sheet 5 of the Traffic Regulation Measures Plans on the A548 Manor Road Industrial Estate Entrance to Holywell Road, Flint
Flintshire County Council	Between the points marked TRM 05-02 and TRM 05-03 on sheet 5 of the Traffic Regulation Measures Plans on the A548 Holywell Road, Flint

Flintshire County Council	Between the points marked TRM 05-03 and TRM 05-04 on sheet 5 of the Traffic Regulation Measures Plans on the A548 Holywell Street, Flint
Flintshire County Council	Between the points marked TRM 05-04 and TRM 05-05 on sheet 5 of the Traffic Regulation Measures Plans on the A548 Trelawny Square, Flint
Flintshire County Council	Between the points marked TRM 05-05 on sheet 5 and TRM 06-01 on sheet 6 of the Traffic Regulation Measures Plans on the A548 Chester Street, Flint
Flintshire County Council	Between the points marked TRM 06-01 and TRM 06-02 on sheet 6 of the Traffic Regulation Measures Plans on the A548 Chester Street, Flint
Flintshire County Council	Between the points marked TRM 06-02 and TRM 06-03 on sheet 6 of the Traffic Regulation Measures Plans on the A548 Chester Road, Oakenholt
Flintshire County Council	Between the points marked TRM 07-01 and TRM 07-02 on sheet 7 of the Traffic Regulation Measures Plans on the Allt Goch Lane, Northop
Flintshire County Council	Between the points marked TRM 08-01 and TRM 08-02 on sheet 8 of the Traffic Regulation Measures Plans on the A548 Chester Road, Oakenholt
Flintshire County Council	Between the points marked TRM 08-03 and TRM 08-04 on sheet 8 of the Traffic Regulation Measures Plans on the Kelsterton Road, Connah's Quay
Flintshire County Council	Between the points marked TRM 09-01 and TRM 09-02 on sheet 9 of the Traffic Regulation Measures Plans on the Private Road (British Steel Road)
Flintshire County Council	Between the points marked TRM 09-02 and TRM 09-03 on sheet 9 of the Traffic Regulation Measures Plans on the Private Road (North Road)
Flintshire County Council	Between the points marked TRM 09-03 and TRM 09-04 on sheet 9 of the Traffic Regulation Measures Plans on the Private Road (River Road)
Flintshire County Council	Between the points marked TRM 10-01 and TRM 10-02 on sheet 10 of the Traffic Regulation Measures Plans on the A548 Phase 4 Roundbout DIP to B1529, Connah's Quay
Flintshire County Council	Between the points marked TRM 10-02 and TRM 10-03 on sheet 10 of the Traffic Measures Plans on the A548 Phase 4 Roundabout DIP, Sealand
Flintshire County Council	Between the points marked TRM 10-03 and TRM 10-04 on sheet 10 of the Traffic Regulation Measures Plans on the A548 Weighbridge Road, Sealand

Flintshire County Council	Between the points TRM 09-01 on sheet 9 and TRM 10-05 on sheet 10 of the Traffic Regulation Measures Plans on the British Steel Road, Sealand

SCHEDULE 9

Article 27

Land in which only new rights etc., may be acquired

(1) Area	*(2) Number of plot shown on land plans*	*(3) Purpose for which rights may be acquired*
Flintshire County Council	8/5, 8/16, 9/7, 9/12	To construct, operate, maintain and use Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	8/6	To construct, operate, maintain and use Work No. 2 and Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	8/13, 8/15	To construct, operate, maintain and use Work Nos. 1, 2, 4 and 10 and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	8/17, 8/18	To construct, operate, maintain and use Work No. 3 and Work No. 6, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related

		development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	8/19, 9/1, 9/2, 9/3, 9/5, 9/8, 9/9, 9/10, 9/13, 9/15, 9/16, 9/18, 9/19, 9/20, 9/21, 9/22	To construct, operate, maintain and use Work No. 3, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	9/4, 9/6, 9/11	To facilitate access to the authorised development as set out in Schedule 1 (authorised development).
Flintshire County Council	9/14	To construct, operate, maintain and use Work No. 6, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	9/17	To construct, operate, maintain and use Work No. 4 and Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.

SCHEDULE 10

Article 27

Modification of compensation and compulsory purchase enactments for creation of new rights

Compensation enactments

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

(i) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 5(5) of Schedule 10 to The Connah's Quay Low Carbon Power Order 202*);

(ii) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 4(8) of Schedule 10 to The Connah's Quay Low Carbon Power Order 202*) to acquire an interest in the land; and

(iii) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of sub-section (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.".

3.—(1) Without limitation on the scope of paragraph (1), the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3) of this Schedule—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

Application of Part 1 of the 1965 Act

4.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 34 (modification of Part 1 of the 1965 Act) to the acquisition of land under article 25 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27 (compulsory acquisition of rights and restrictive covenants)—

(a) with the modifications specified in paragraph 5; and

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

5.—(1) The modifications referred to in paragraph 4(1)(a) are set out in sub-paragraph (2).

(2) References in the 1965 Act to land are, in the 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 restriction 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.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

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

(**a**) 1973 c. 26.

owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

(4) 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 modified so 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.

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by sub-section (1) of that section (as it applies to a compulsory acquisition), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(**a**) (powers of entry: further notices of entry), 11B(**b**) (counter-notice requiring possession to be taken on specified date), 12(**c**) (unauthorised entry) and 13(**d**) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 34(4) (modification of Part 1 of the 1965 Act) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

"SCHEDULE 2A Section 8

Counter-notice requiring purchase of land not in notice to treat

Introduction

1.—(1) This Schedule applies where an acquiring authority serves 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 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act) of The Connah's Quay Low Carbon Power Order 202* in respect of the land to which the notice to treat relates.

(**a**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
(**b**) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.
(**c**) 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.
(**d**) 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).
(**e**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(2) But see article 33 (acquisition of subsoil or airspace only) of The Connah's Quay Low Carbon Power Order 202* which excludes the acquisition of subsoil or airspace only from this Schedule.

(3) In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

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

3. 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

4. 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.

5. 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").

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

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

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

Determination by the Upper Tribunal

9. On a referral under paragraph 6, 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.

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

(a) the effect of the acquisition of the right or the imposition of the covenant;

(b) the use to be made of the right or covenant proposed to be acquired or imposed; and

(c) if the right or covenant is proposed to be acquired or 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.

11. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 9, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

12. If the Upper Tribunal determines that the acquiring 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.

13.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of six 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 acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

14. Any dispute as to the compensation is to be determined by the Upper Tribunal.".

Application of the 2017 Regulations

6. References to land in the Schedule to the 2017 Regulations are, in the appropriate contexts, to be read (according to the requirements of the 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 (including for the benefit of a statutory undertaker); or

(b) the land over which the right is to be exercisable, or the restrictive covenant is or is to be enforceable.

SCHEDULE 11

Article 36

Land of which only temporary possession may be taken

(1) Area	*(2) Number of plot shown on land plans*	*(3) Purpose for which temporary possession may be taken*
Flintshire County Council	1/1, 1/2, 1/3, 1/4, 1/5, 1/6, 1/7, 1/8, 1/9, 2/1, 2/2, 2/3, 3/1, 4/1, 4/2, 4/3, 4/4, 5/1, 5/2, 5/3, 5/4, 5/5, 5/6, 5/7, 5/8, 5/9, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/16, 5/17, 6/1, 6/2, 6/3, 8/3, 8/7, 8/8, 8/9, 8/14	Temporary use to facilitate the carrying out of Work No. 11 and further associated development.
Flintshire County Council	7/1	Temporary use to facilitate the carrying out of Work No. 10 and further associated development.
Flintshire County Council	8/4	Temporary use to facilitate the carrying out of Work No. 10 and Work No. 11 and further associated development.
Flintshire County Council	9/24, 9/25, 9/26, 9/27, 9/28, 9/29, 9/30, 9/31, 10/1, 10/2	Temporary use to facilitate the carrying out of Work No. 12 and further associated development.
Flintshire County Council	1/1, 1/2, 1/3, 1/4, 1/5, 1/6, 1/7, 1/8, 1/9, 2/1, 2/2, 2/3, 3/1, 4/1, 4/2, 4/3, 4/4, 5/1,	Temporary use to facilitate the carrying out of Work No. 11 and further

	5/2, 5/3, 5/4, 5/5, 5/6, 5/7, 5/8, 5/9, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/16, 5/17, 6/1, 6/2, 6/3, 8/3, 8/7, 8/8, 8/9, 8/14	associated development.

SCHEDULE 12

Article 42

Removal of hedgerows

(1) Location of hedgerow	*(2) Relevant part of the authorised development*	*(3) Important hedgerow*
Hedgerow 19 as shown on sheet 7 of the hedgerow removal plan with grid reference SJ 25177 70849.	Work Nos. 7, 8 and 9.	No
Hedgerow 33 as shown on sheet 8 of the hedgerow removal plan with grid reference SJ 27549 71083.	Work No. 1.	No

SCHEDULE 13

Article 44

Protective provisions

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the affected undertakers referred to in this Part of this Schedule (save for any affected undertakers which are specifically protected by any other Part of this Schedule, which will take precedence) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

Interpretation

2. In this Part of this Schedule—

"affected undertaker" means—

(a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;

(b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(**a**);

(c) a water undertaker within the meaning of the Water Industry Act 1991(**b**); or

(d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

(**a**) 1986 c. 44. 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 (c. 27).
(**b**) 1991 c. 56.

for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified in Parts 2 to 9 of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

"alternative apparatus" means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991;

(d) in the case of a sewerage undertaker—

(i) any drain or winks vested in the affected undertaker under the Water Industry Act 1991; and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (Agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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 includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties; and

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in temporarily closed streets

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by articles 15 (stopping up of streets, public rights of way and rights of navigation)) or 16 (temporary restriction of use of streets), a affected undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(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 or over which access to any apparatus is enjoyed or requires that the affected undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a affected undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the affected undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected 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 an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected 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 affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable 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 of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) The affected 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 affected 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 of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected 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 controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected 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.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected 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 upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) 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 affected 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 that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

8.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 6(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(1), the undertaker must submit to the affected 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 affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

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

(4) If an affected 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 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(1).

(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 affected 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.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(1).

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

(3) If in accordance with the provisions of this Part of this Schedule—

(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 of this Schedule 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 affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus 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 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 an affected 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 affected undertaker 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.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 6(1) 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 an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and

(b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected 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 an affected undertaker, its officers, servants, contractors or agents.

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

Enactments and agreements

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

13. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"the code rights" has the same meaning as in the Paragraph 3 of the electronic communications code(**b**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure 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 which the undertaker 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;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

14. The exercise of the powers conferred by this Order is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

15.—(1) Subject to sub-paragraph (2), if as a result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

(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 authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, 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 an operator, its officers, servants, contractors or agents.

16. The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

17. Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 49 (arbitration).

18. This Part of this Schedule does not apply to—

(**a**) 2003 c. 21.
(**b**) See section 106 of the 2003 Act. Section 106 was amended by section 4(3) of the Digital Economy Act 2017 (c. 30).

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) 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 development.

19. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NETWORK RAIL

20. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 34 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

21. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form reasonably prescribed from time to time by Network Rail;

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

"the 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 their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) 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 and any successor to Network Rail Infrastructure Limited's railway undertaking;

"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) 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 or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under:

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article (power to maintain the authorised development) in respect of such works.

22.—(1) Where under this Part of this Schedule 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 their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

23.—(1) The undertaker may not appropriate or acquire or take temporary possession of any railway property or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus of Network Rail otherwise than by agreement.

(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 under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(4) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(5) Where Network Rail is asked to give its consent pursuant to this paragraph and by the end of the period of 28 days beginning with the date on which such request for Network Rail's consent was made Network Rail has not intimated their refusal together with the grounds of any such refusal of such consent the undertaker may serve upon Network Rail written notice requiring Network Rail to intimate approval or disapproval within a further period of 14 days beginning with the date upon which Network Rail receives written notice from the undertaker. If by the expiry of the further 14 days Network Rail has not intimated consent or refusal of consent, Network Rail is deemed to have given consent for the exercise of the respective powers.

(6) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work unless otherwise agreed with Network Rail.

24.—(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 under article 49 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 14 days beginning with

the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 14 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified 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 without unnecessary delay 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 their reasonable satisfaction.

25.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 24(3) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 24;

(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 reasonably practicable to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be 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 and properly incurred expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable (in whole or in part) to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

26. 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 they may reasonably require with regard to a specified work or the method of constructing it.

27. 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 of this Schedule 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.

28.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the

reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 29(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

29. The undertaker must repay to Network Rail all reasonable and proper fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 24(2) or in constructing any protective works under the provisions of paragraph 24(3) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works (if any);

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be 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 which may in the opinion of the engineer, require 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 which 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.

30.—(1) In this paragraph—

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

(b) "Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which 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 24(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the specified works 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 which 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 24(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 sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented 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 24(1) has effect subject to the sub-paragraph.

(6) The undertaker shall use reasonable endeavours not to allow the use or operation of the authorised development in a manner that causes EMI and which introduces an intolerable risk to the operation of the railway or the safety of the track workers (such intolerable risk would include introducing exposure to electric and magnetic fields in excess of the requirements of the Control of Electromagnetic field at Work Regulations 2016, unacceptable transferred voltage potentials and interference impacting the safe operation of the signalling equipment), until measures have been taken in accordance with this paragraph to reduce the risk to tolerable levels of EMI.

(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;

(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; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

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

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 25.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 34(1) applies to the direct costs and expenses reasonably incurred or direct 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 sub-paragraph (6) applies.

(10) For the purpose of paragraph 29(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that 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.

31. 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 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.

32. 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.

33. Any additional expenses which 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 within 30 days of the receipt of a VAT invoice.

34.—(1) The undertaker must pay to Network Rail all reasonable and properly incurred costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 48 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; 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 upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

(f) and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (unless it was done with 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 the provisions of this sub-paragraph.

(2) The indemnity in sub-paragraph (1) shall be limited to a maximum aggregate liability of £25,000,000 (twenty-five million pounds sterling).

(3) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands;

(b) not make any settlement or compromise of such a claim or demand without the prior written consent of the undertaker;

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands; and

(d) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in sub-paragraph (1).

(4) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under that sub-paragraph shall, if relevant, include a sum equivalent to the relevant costs in circumstances where Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator, and Network Rail shall use reasonable endeavours in advance of any such liability occurring to assist the undertaker in obtaining copies of any agreements with train operators which may be relevant the purposes of sub-paragraph (1) and identifying the basis of calculation of such relevant costs.

(5) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Network Rail, its officers, servants, contractors or agents.

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

(7) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (5) which relates to the relevant costs of that train operator.

(8) The obligation under sub-paragraph (5) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (6).

(9) In this paragraph—

(a) "the relevant costs" means the direct costs, losses and expenses (including loss of revenue) reasonably and properly incurred by each train operator as a consequence of any specified work including but not limited to 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 subparagraph (1); and

(b) "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.

35. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 34) 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 of this Schedule (including any claim relating to those relevant costs).

36. In the assessment of any sums payable to Network Rail under this Part of this Schedule 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 of this Schedule or increasing the sums so payable.

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

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

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

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

39. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

40. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 46 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

41. Any difference or dispute arising between the undertaker and Network Rail under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Network Rail, determined by arbitration in accordance with article 49 (arbitration).

PART 4

FOR THE PROTECTION OF THE DEE CONSERVANCY

42. For the protection of the Dee Conservancy, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the Dee Conservancy.

43. For the purposes of this Part of this Schedule, "Dee Conservancy" has the same meaning as in Article 2(1) (interpretation).

Public rights of navigation

44.—(1) The undertaker must serve notice on the Dee Conservancy not later than 28 days prior to the proposed commencement date of any suspension of public rights of navigation pursuant to article 50 (temporary interference with river Dee and Public rights of navigation).

(2) Any such notice must provide details of the suspension including particulars of:

(a) commencement date;

(b) duration; and

(c) the affected area.

(3) Any suspension of the public rights of navigation under article 50(1)(c) (temporary interference with river Dee and Public rights of navigation) shall not take place except in accordance with approval in writing by the Dee Conservancy and any conditions imposed by the Dee Conservancy under this paragraph or determined under paragraph 47 (disputes).

(4) The Dee Conservancy may in relation to any notice impose reasonable conditions for any purpose described in sub-paragraph (5).

(5) Conditions imposed under sub-paragraph (4) may include conditions as to—

(a) the limits of any area subject to a temporary suspension of public rights of navigation;

(b) the duration of any temporary suspension;

(c) the means of marking or otherwise providing warning in the river Dee of any area affected by a temporary suspension of public rights of navigation; and

(d) the use by the undertaker of the area subject to any temporary suspension so as not to interfere with any other part of the river Dee or affect its use.

(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 Dee Conservancy notice as soon as is reasonably practicable and the details required under sub-paragraph (2) as soon as reasonably practicable subsequently and

must comply with the remainder of this paragraph in so far as is reasonably practicable in the circumstances.

Facilities for navigation

45.—(1) The undertaker must not in the exercise of the powers granted by this order interfere with any marks, lights or other navigational aids in the river Dee without the agreement of the Dee Conservancy, and must ensure that access to such aids remains available during and following construction of any specified works.

Costs and exercise of DCO powers and compensation

46.—(1) The undertaker shall be responsible for and make good to the Dee Conservancy all financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Dee Conservancy by reason of anything done in relation to a mooring or buoy pursuant to paragraph 45 (facilities for navigation); or

(2) The fact that any act or thing may have been done—

(a) by the Dee Conservancy on behalf of the undertaker; or

(b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Dee Conservancy, or in a manner approved by the Dee Conservancy, or under its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the Dee Conservancy or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(3) The Dee Conservancy must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand shall be made without the prior consent of the undertaker.

Disputes

47. Any dispute arising between the undertaker and the Dee Conservancy under this Part of this Schedule shall be determined by arbitration in accordance with article 49 (arbitration) unless otherwise agreed in writing by the undertaker and the Dee Conservancy.

PART 5

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Application

48.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless National Grid is acting with the benefit of the Order or as otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 58(3)(b)).

Interpretation

49. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by or on behalf of the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event, and such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid; and

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

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

"apparatus" means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article (1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"incentive deduction" means any incentive deduction National Grid receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a direct result of the authorised works;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: use, repair, alter, inspect, renew or remove the apparatus;

"NGESO" means as defined in the STC;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 54(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 54(2) (removal of apparatus) or otherwise; and

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity transmission owner and NGESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid's transmission system which arises as a result of the authorised works; and

"transmission owner" means as defined in the STC.

On Street Apparatus

50. Except for paragraphs 51 (apparatus of National Grid in stopped up streets), 56 (retained apparatus: protection), 57 (expenses) and 58 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

51.—(1) Where any street is stopped up under article 15 (stopping up of streets, public rights of way and rights of navigation), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 54 (removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 56 (retained apparatus: protection).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (stopping up of streets, public rights of way and rights of navigation), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably

necessary to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

52. The undertaker, in the case of the powers conferred by article 24 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

53.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus of National Grid or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid, otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 56 (retained apparatus: protection) or any other paragraph of this Part of this Schedule shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

54.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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 National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the

undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 55(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, 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 or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraphs (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 of this Schedule.

Facilities and rights for alternative apparatus

55.—(1) Subject to sub-paragraph (2), where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 62 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 49 (arbitration) applies.

Retained apparatus: protection

56.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to specified works which will or may involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement which shows and describes—

(a) the exact position of the specified works;

(b) the level at which the specified works are proposed to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

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

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of the trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (7) or (9); and

(b) must not be unreasonably withheld or delayed.

(6) If, after the expiry of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Grid, National Grid has not communicated approval or disapproval pursuant to sub-paragraph (4), National Grid is deemed to have approved the plans as supplied.

(7) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus and National Grid must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Grid.

(8) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (7), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (7) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(9) Where National Grid reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's reasonable satisfaction prior to the

commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(10) If National Grid in accordance with sub-paragraphs (7) or (9) and in consequence of the works proposed by the undertaker reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 54(2) (removal of apparatus) applies as if the removal of the apparatus had been required by the undertaker.

(11) 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 the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(12) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any specified works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

57.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably and properly incurred by National Grid in direct consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 54(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works under paragraph 56(9) (including any temporary protective works and their removal); and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 62 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule 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 National Grid by virtue of sub-paragraph (1) will 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 will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) 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 National Grid 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.

Indemnity

58.—(1) Subject to sub-paragraphs (2) to (7), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay within 30 days of receipt of an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an incentive deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as the undertaker or as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or articles 7 (benefit of the Order) or 8 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) The indemnity in sub-paragraph (1) shall be limited to a maximum aggregate liability of £25,000,000 (twenty-five million pounds sterling).

(8) The undertaker must not commence construction (and not permit the commencement of such construction) of the specified works until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

Enactments and agreements

59. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

60.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 54(2) (removal of apparatus) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 56 (retained apparatus: protection), the undertaker shall use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

61. If in consequence of the agreement reached in accordance with paragraph 53(1) (acquisition of land) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

62. Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 49 (arbitration).

Notices

63. Notwithstanding article 47 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 56 (retained apparatus: protection) must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF GTC INFRASTRUCTURE LIMITED

Application

64. For the protection of GTC the following provisions have effect, unless otherwise agreed in writing between the undertaker and GTC.

Interpretation

65. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable GTC to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means either—

(a) any mains, pipes or other apparatus belonging to or maintained by GPL for the purposes of gas supply; or

(b) electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by ENC and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"ENC" means The Electricity Network Company Limited, a company registered with company number 05581824 and whose registered office address is at Synergy House Woolpit Business Park, Woolpit, Bury St Edmunds, Suffolk, England, IP30 9UP;

"functions" includes powers and duties;

"GTC" means either—

(a) GPL; or

(b) ENC;

"GPL" means GTC Pipelines Limited, a company registered with company number 03104203 and whose registered office address is at Synergy House Woolpit Business Park, Woolpit, Bury St Edmunds, Suffolk, England, IP30 9UP; and

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in the streets

66. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and GTC are regulated by the provisions of the 1991 Act.

Apparatus in temporarily closed streets

67. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by articles 15 (stopping up of streets, public rights of way and rights of navigation)) or 16 (temporary restriction of use of streets), GTC is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to inspect, maintain and operate any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

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

(2) The undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right of apparatus held by GTC otherwise than by agreement.

Removal of apparatus

69.—(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 or over which access to any apparatus is enjoyed or requires GTC's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of GTC to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction, as provided in writing, of GTC in accordance with sub- paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to GTC 42 days' 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 GTC reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to GTC 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 (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, GTC must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable 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 of this Schedule must be constructed in such manner and in such line or situation as may be agreed between GTC and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) GTC 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 GTC 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 of this Schedule.

Facilities and rights for alternative apparatus

70.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to GTC 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 upon such terms and conditions as may be agreed between the undertaker and GTC or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) Unless otherwise agreed with GTC, the facilities and rights granted pursuant to sub-paragraph (1) must be no less favourable on the whole to GTC than the facilities and rights enjoyed by it in respect of the apparatus to be removed.

(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 GTC 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 GTC as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

71.—(1) Not less than 42 days before starting the execution of any works of the type referred to in paragraph 69(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 69(1), the undertaker must submit to GTC a plan, section and description of the works to be executed together with an assessment of the impact of the works upon the apparatus of GTC and the measures proposed to protect the apparatus of GTC in accordance with the relevant applicable code of practice and standards.

(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 GTC for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and GTC is entitled to watch and inspect the execution of those works.

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

(4) If GTC 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 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 69(1).

(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 GTC 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.

Access

72. If in consequence of the agreement reached in accordance with paragraph 69 or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by GTC in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable GTC to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expenses and costs

73.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to GTC within 30 days of receipt of an invoice or a cost schedule all charges, costs and expenses reasonably incurred by GTC in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works and any compensation properly paid by GTC in connection with the obtainment of any necessary facilities and rights in other land in which the alternative apparatus is to be constructed in accordance with paragraph 69(1).

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

(3) If in accordance with the provisions of this Part of this Schedule—

(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 of this Schedule 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 GTC by virtue of sub-paragraph (1) and/or (2) 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 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 GTC in respect of works by virtue of sub-paragraph (1) and/or (2) 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 GTC 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.

74.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 69(1), 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 GTC, or there is any interruption in any service provided, or in the supply of any goods, by GTC, the undertaker must—

(a) bear and pay the cost reasonably incurred by GTC in making good such damage or restoring the supply; and

(b) provide reasonable compensation to GTC for any other expenses, loss, damages, penalty or costs incurred by GTC,

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 GTC, its officers, servants, contractors or agents.

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

Enactments and agreements

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

PART 7

FOR THE PROTECTION OF SP MANWEB AS ELECTRICITY UNDERTAKER

Application

76. The following provisions have effect for the protection of SP Manweb unless otherwise agreed in writing between the undertaker and SP Manweb.

Interpretation

77. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to enable SP Manweb to fulfil its statutory functions in a manner no less efficient than previously (to the reasonable satisfaction of SP Manweb);

"apparatus" means electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by SP Manweb together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SP Manweb for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as is given to the term "authorised development" in article(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Part of this Schedule;

"commence" has the same meaning as in article 2 of this Order and commencement must be construed to have the same meaning;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SP Manweb including use, repair, alter, inspect, renew or remove the apparatus;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"SP Manweb" means SP Manweb PLC (Company No. 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET or any successor in statutory function;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which:

(a) will or may be situated under, over or within 15 metres (measured in any direction) of any apparatus the removal of which has not been required by the undertaker under paragraph 80(2) or otherwise;

(b) is reasonably likely to adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 80(2) or otherwise; and/or

(c) include any of the activities that are referred to in SP Manweb's polices for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines" and guidance note 47 "Avoiding Danger from Underground Services".

On Street Apparatus

78. Except for paragraphs 82, 83 and 84 of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SP Manweb, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SP Manweb are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

79.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest of SP Manweb or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus of SP Manweb otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between SP Manweb and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SP Manweb and/or affects the provisions of any enactment or agreement regulating the relations between SP Manweb and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SP Manweb reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between SP Manweb and the undertaker acting reasonably and which must be no less favourable on the whole to SP Manweb unless otherwise agreed by SP Manweb, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(4) No agreement or consent granted by SP Manweb under any other paragraph of this Part of this Schedule constitutes agreement under sub-paragraph (1).

Removal of apparatus

80.—(1) If, in the exercise of the agreement reached in accordance with paragraph 79 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of SP Manweb 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 SP Manweb in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any specified works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SP Manweb at least 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SP Manweb reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to SP Manweb to its satisfaction (taking into account paragraph 81(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the use and maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by 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, SP Manweb 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 or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between SP Manweb and the undertaker.

(5) SP Manweb must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SP Manweb 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 of this Schedule.

(6) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

Facilities and rights for alternative apparatus

81.—(1) Subject to sub-paragraph (2), where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SP Manweb facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SP Manweb and must be no less favourable on the whole to SP Manweb than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by SP Manweb.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SP Manweb under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and

conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SP Manweb 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 in the matter will be referred to arbitration in accordance with paragraph 88 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SP Manweb as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 49 (arbitration) applies.

Retained apparatus: Protection of SP Manweb as Electricity Undertaker

82.—(1) Not less than 56 days before the commencement of any specified works the removal of which has not been required by the undertaker under paragraph 80(2), the undertaker must submit to SP Manweb a plan of the works to be executed and seek from SP Manweb details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15m of any apparatus, the plan to be submitted to SP Manweb under sub-paragraph (1) must include a method statement which shows and describes—

(a) the exact position of the specified works;

(b) the level at which the specified works are proposed to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) In relation to any specified works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity support or 15 metres for 132kV apparatus or between any two or more adjacent electricity supports which are within the Order limits or within 10 metres of the Order limits, the plan to be submitted under sub-paragraph (1) must include a method statement which, in addition to the matters set out in sub-paragraph (2), must—

(a) describe details of any cable trench design including route, dimensions, clearance to support foundations;

(b) demonstrate that support foundations will not be affected prior to, during and post construction;

(c) describe load bearing capacities of trench supporting structures;

(d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) provide a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) provide an assessment of earth rise potential if reasonably required by SP Manweb's engineers; and

(h) provide evidence that trench collapse resistance and supporting structures bearing capacity are to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) applies until SP Manweb has given written approval of the plan so submitted provided that SP Manweb must not unreasonably delay notification of its approval or disapproval.

(5) Any approval of SP Manweb required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (7) or (9); and

(b) must not be unreasonably withheld or delayed.

(6) If after the expiry of 56 days SP Manweb has not communicated approval or disapproval, SP Manweb is deemed to have approved the plans as supplied.

(7) In relation to any work requiring the submission of a plan under sub-paragraph (1), SP Manweb may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus and SP Manweb must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to SP Manweb.

(8) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and SP Manweb and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) or (9) by SP Manweb for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SP Manweb will be entitled to watch and inspect the execution of those works.

(9) Where SP Manweb reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SP Manweb's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and SP Manweb must give 56 days' notice of such works from the date of submission of a plan pursuant to sub-paragraph (1) (except in an emergency).

(10) If SP Manweb in accordance with sub-paragraphs (7) or (9) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 80(2) applies as if the removal of the apparatus had been required by the undertaker.

(11) 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 the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph must apply to and in respect of the new plan.

(12) The undertaker must not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the SP Manweb notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any specified works authorised under the Order, the undertaker must comply with statutory requirements and guidelines for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines" in relation to any apparatus and aligning with SP Manweb guidelines.

Expenses

83.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SP Manweb within 30 days of receipt of an invoice all reasonable charges, costs and expenses reasonably incurred by SP Manweb in direct consequence of the execution of any authorised development including without limitation in respect of—

(a) any costs reasonably incurred by or compensation properly paid by SP Manweb in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by SP Manweb as a consequence of SP Manweb—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 80(3); and/or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SP Manweb;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works under paragraph 82(9) (including any temporary protective works and their removal); and / or

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, 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 of this Schedule 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 SP Manweb by virtue of sub-paragraph (1) will 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 will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will 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 SP Manweb 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 SP Manweb 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.

Indemnity

84.—(1) Subject to sub-paragraphs (2) to (5), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works,

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

(a) bear and pay within 30 days of an invoice or claim from SP Manweb the cost reasonably and properly incurred by SP Manweb in making good such damage or restoring the supply; and

(b) indemnify SP Manweb for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from SP Manweb, by reason or in consequence of any such damage or interruption or SP Manweb becoming liable to any third party as aforesaid other than arising from any default of SP Manweb,

provided that at all times SP Manweb will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by SP Manweb on behalf of the undertaker or in accordance with a plan approved by SP Manweb or in accordance with any requirement of SP Manweb as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan (or as otherwise agreed between the undertaker and SP Manweb pursuant to paragraph 82).

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of SP Manweb, its officers, employees, contractors or agents;

(b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by SP Manweb as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 7 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus; and / or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) SP Manweb must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and shall act reasonably in considering its representations.

(5) The indemnity in sub-paragraph (1) shall be limited to a maximum aggregate liability of £25,000,000 (twenty-five million pounds sterling).

Enactments and agreements

85. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SP Manweb and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and SP Manweb in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

86.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or SP Manweb requires the removal of apparatus under paragraph 80(2) or SP Manweb makes requirements for the protection or alteration of apparatus under paragraph 82, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SP Manweb's undertaking and SP Manweb must use reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SP Manweb's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by SP Manweb is required, it must not be unreasonably withheld or delayed.

Access

87. If in consequence of the agreement reached in accordance with paragraph 79(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable SP Manweb to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

88. Any difference or dispute arising between the undertaker and SP Manweb under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SP Manweb, determined by arbitration in accordance with article 49 (arbitration).

PART 8

FOR THE PROTECTION OF LIVERPOOL BAY CCS LIMITED

Application

89. For the protection of Liverpool Bay CCS Limited referred to in this Part of this Schedule the following provisions have effect, unless Liverpool Bay CCS Limited is acting with the benefit of the Order or as otherwise agreed in writing between the undertaker and Liverpool Bay CCS Limited.

Interpretation

90. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Liverpool Bay CCS Limited to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means any mains, pipes AGIs or other apparatus belonging to or maintained by Liverpool Bay CCS Limited for the purposes of the transport of carbon dioxide;

"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 upon land; and

"shared area" means the land included within the Order limits for both the Order and HyNet Order.

Precedence of the 1991 Act in respect of apparatus in the streets

91. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Liverpool Bay CCS Limited are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in temporarily closed streets

92. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by articles 15 (stopping up of streets, public rights of way and rights of navigation) or 16 (temporary restriction of use of streets), Liverpool Bay CCS Limited is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

93.—(1) The undertaker may not appropriate or acquire or take temporary possession of any land within the shared area or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus within the shared area without the express written agreement of Liverpool Bay CCS Limited.

(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

94.—(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 or over which access to any apparatus is enjoyed or requires that Liverpool Bay CCS Limited's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of Liverpool Bay CCS Limited to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Liverpool Bay CCS Limited in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Liverpool Bay CCS Limited 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 Liverpool Bay CCS Limited reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Liverpool Bay CCS Limited 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 (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Liverpool Bay CCS Limited must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable 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 of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Liverpool Bay CCS Limited and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) Liverpool Bay CCS Limited 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 Liverpool Bay CCS Limited 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 of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Liverpool Bay CCS Limited 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 controlled by the undertaker, that work, instead of being executed by Liverpool Bay CCS Limited, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Liverpool Bay CCS Limited.

(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.

Facilities and rights for alternative apparatus

95.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Liverpool Bay CCS Limited 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 upon such terms and conditions as may be agreed between the undertaker and Liverpool Bay CCS Limited or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) 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 Liverpool Bay CCS Limited 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 that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

96.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 94(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 94(1), the undertaker must submit to Liverpool Bay CCS Limited 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 Liverpool Bay CCS Limited for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Liverpool Bay CCS Limited is entitled to watch and inspect the execution of those works.

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

(4) If Liverpool Bay CCS Limited 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 89 to 95 apply as if the removal of the apparatus had been required by the undertaker under paragraph 94(1).

(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 Liverpool Bay CCS Limited 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.

Expenses and costs

97.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Liverpool Bay CCS Limited the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 94(1).

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

(3) If in accordance with the provisions of this Part of this Schedule—

(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 of this Schedule 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 Liverpool Bay CCS Limited by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus 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 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 Liverpool Bay CCS Limited 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 Liverpool Bay CCS Limited 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.

98.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 94(1), 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 Liverpool Bay CCS Limited, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and

(b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by Liverpool Bay CCS Limited,

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 Liverpool Bay CCS Limited, its officers, servants, contractors or agents.

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

Enactments and agreements

99. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Liverpool Bay CCS Limited in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 9

FOR THE PROTECTION OF ENI UK LIMITED

Application

100. For the protection of ENI UK Limited referred to in this Part of this Schedule the following provisions have effect, unless ENI UK Limited is acting with the benefit of the Order or as otherwise agreed in writing between the undertaker and ENI UK Limited.

Interpretation

101. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable ENI UK Limited to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means any mains, pipes AGIs or other apparatus belonging to or maintained by ENI UK Limited for the purposes of the transport of natural gas;

"functions" includes powers and duties; and

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in the streets

102. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and ENI UK Limited are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in temporarily closed streets

103. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by articles 15 (stopping up of streets, public rights of way and rights of navigation) or 16 (temporary restriction of use of streets) , ENI UK Limited is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

104. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus owned by ENI UK Limited without the express written agreement of ENI UK Limited.

Removal of apparatus

105.—(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 or over which access to any apparatus is enjoyed or requires that ENI UK Limited's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of ENI UK Limited to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of ENI UK Limited in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to ENI UK Limited 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 ENI UK Limited reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to ENI UK Limited 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 (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, ENI UK Limited must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable 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 of this Schedule must be constructed in such manner and in such line or situation as may be agreed between ENI UK Limited and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) ENI UK Limited 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 ENI UK Limited 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 of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to ENI UK Limited 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 controlled by the undertaker, that work, instead of being executed by ENI UK Limited, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of ENI UK Limited.

(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.

Facilities and rights for alternative apparatus

106.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to ENI UK Limited 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 upon such terms and conditions as may be agreed between the undertaker and ENI UK Limited or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) 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 ENI UK Limited 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 that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

107.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 105(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 105(1), the undertaker must submit to ENI UK Limited 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 ENI UK Limited for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and ENI UK Limited is entitled to watch and inspect the execution of those works.

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

(4) If ENI UK Limited 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 100 to 106 apply as if the removal of the apparatus had been required by the undertaker under paragraph 105(1).

(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 ENI UK Limited 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.

Expenses and costs

108.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to ENI UK Limited the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 105(1).

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

(3) If in accordance with the provisions of this Part of this Schedule—

(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 of this Schedule 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 ENI UK Limited by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus 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 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 ENI UK Limited 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 ENI UK Limited 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.

109.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 105(1), 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 ENI UK Limited, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and

(b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by ENI UK Limited,

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 ENI UK Limited, its officers, servants, contractors or agents.

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

Enactments and agreements

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

PART 10

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

111.—(1) Subject For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to 121(3)(b)).

Interpretation

112. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by or on behalf of the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event and such insurance shall be maintained during the construction period of the authorised works; and after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Gas's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas: use, repair, alter, inspect, renew or remove the apparatus;

"National Gas" means National Gas Transmission plc (Company Number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Network Code" means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

"specified works" means any of the authorised which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 117(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 117(2) or otherwise; and

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22.

On Street Apparatus

113. Except for paragraphs 114 (apparatus of National Gas in stopped up streets), 119 (retained apparatus: protection), 120 (expenses) and 121 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Gas in stopped up streets

114.—(1) Where any street is stopped up under article 15 (stopping up of streets, public rights of way and rights of navigation), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 117 (removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 119 (retained apparatus: protection).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (stopping up of streets, public rights of way and rights of navigation) , National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

115. The undertaker, in the case of the powers conferred by article 24 (protective work to buildings), must exercise those powers so as not to obstruct the access to any apparatus without the written consent of National Gas.

Acquisition of land

116.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any apparatus or land owned by National Gas or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus of National Gas otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the specified works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such specified works.

(3) Save where otherwise agreed in writing between National Gas and the undertaker the undertaker and National Gas agree that where there is any inconsistency or duplication between

the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph 119 (retained apparatus: protection) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

117.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas 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 National Gas in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 118(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas 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 or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraphs (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 of this Schedule.

Facilities and rights for alternative apparatus

118.—(1) Subject to sub-paragraph (2), where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) 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 less favourable on the whole to National Gas 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 matter may be referred to arbitration in accordance with paragraph 125 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 49 (arbitration) applies.

Retained apparatus: protection

119.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the specified works;

(b) the level at which the specified works are proposed to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and

(b) must not be unreasonably withheld.

(5) If, after the expiry of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Gas, National Gas has not communicated approval or disapproval pursuant to sub-paragraph (3), National Gas is deemed to have approved the plans as supplied.

(6) In relation to any specified work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus and National Gas must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Gas.

(7) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(8) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gass' satisfaction prior to the commencement of any

specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Gas in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 111 to 113 and 116 to 118 apply as if the removal of the apparatus had been required by the undertaker under paragraph 117(2) (removal of apparatus).

(10) 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 the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times;

(12) At all times when carrying out any specified works National Gas must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 120.

Expenses

120.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses reasonably and properly incurred by National Gas indirect consequence of the execution of any specified works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas:

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 117(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works under paragraph 119(9) (including any temporary protective works and their removal); and

(2) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

(4) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

(5) 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 paragraph 125 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule 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 National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(7) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) 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 National Gas 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.

Indemnity

121.—(1) Subject to sub-paragraphs (2) and (7), if by reason or in consequence of the construction of specified works or in consequence of the construction, use maintenance or failure of any of the specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the specified works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay within 30 days of receipt of an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and

(b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies),

excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or articles 7 (benefit of the Order) or 8 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the prior written consent of the undertaker.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) The indemnity in sub-paragraph (1) shall be limited to a maximum aggregate liability of £25,000,000 (twenty-five million pounds sterling).

(8) The undertaker must not commence construction (and not permit the commencement of such construction) of the specified works until the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the specified works from the proposed date of commencement of construction of the specified works) and National Gas has confirmed the same in writing to the undertaker.

Enactments and agreements

122. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

123.—(1) Where in consequence of the proposed construction of any part of the specified works, the undertaker or National Gas requires the removal of apparatus under paragraph 117(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 119 (retained apparatus: protection), the undertaker shall use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of

the specified works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas shall use reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

124. If in consequence of the agreement reached in accordance with paragraph 116(1) (acquisition of land) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

125. Any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 49 (arbitration).

Notices

126. Notwithstanding article 47 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 119 (retained apparatus: protection) must be submitted to https://lsbud.co.uk/ or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 14

Article 46

Documents and plans to be certified

(1) Document name	*(2) Document reference*	*(3) Revision number*	*(4) Date*
access, streets, rights of way and rights of navigation plans	2.6	0	August 2025
book of reference	4.1	0	August 2025
design principles document	7.8	0	August 2025
curlew mitigation strategy	6.13	0	August 2025
environmental statement (consisting of 4 volumes)	6.1–6.4	0	August 2025
framework construction environmental management plan	6.5	0	August 2025
framework construction traffic management plan	6.6	0	August 2025
framework	6.7	0	August 2025

construction worker travel plan			
framework site waste management plan (included within framework construction environment management plan)	6.5	0	August 2025
greenhouse gas reduction strategy	6.4	0	August 2025
hedgerow removal plan	2.8	0	August 2025
land plans	2.2	0	August 2025
lighting strategy	7.22	0	August 2025
marine invasive non-native species outline management plan	6.4	0	August 2025
navigational risk assessment	6.15	0	August 2025
off-site net benefit for biodiversity and green infrastructure strategy	6.14	0	August 2025
Operation and maintenance mitigation register	6.4	0	August 2025
outline landscape and ecological management plan	6.9	0	August 2025
outline surface water drainage strategy	6.4	0	August 2025
parameter plans	2.5	0	August 2025
works plans	2.4	0	August 2025
Overarching Written Scheme of Investigation for Terrestrial and Marine Heritage Mitigation	6.8	0	August 2025

SCHEDULE 15

Article 49

Arbitration rules

Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to article 49 (arbitration) of the Order.

(2) The Parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the Parties. Any dispute which is not resolved amicably by the senior management of the Parties within twenty business days of

the dispute arising, or such longer period as agreed in writing by the Parties, will be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration will be deemed to have commenced when a party ("the Claimant") serves a written notice of arbitration on the other party ("the Respondent").

Time periods

2.—(1) All time periods in these Arbitration Rules will be measured in business days and this will exclude weekends, bank and public holidays.

(2) Time periods will be calculated from the day after the Arbitrator is appointed which will be either—

(a) the date the Arbitrator notifies the parties in writing of their acceptance of an appointment by agreement of the parties; or

(b) the date the Arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs 2 to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the Arbitrator being appointed, the Claimant must provide both the Respondent and the Arbitrator with—

(a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant's contentions as to those issues, and the remedy it is seeking; and

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the Claimant's statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent must provide the Claimant and the Arbitrator with—

(a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and

(c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 5 days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—

(a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the Respondent's submissions;

(c) any expert report in response to the Respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and

(e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The Arbitrator must make an award on the substantive difference based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within 5 days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the Arbitrator advising the parties that they will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator must direct a date and venue which they consider is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

(5) A decision must be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

(6) There is no process of examination and cross-examination of experts, but the Arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) is—

(a) at least 20 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and

(c) the form and content of a joint report will be as directed by the Arbitrator and must be provided at least 5 days before the hearing.

(7) Within 10 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator will take these submissions into account in the Award.

(8) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(10) The Arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given is to be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996(**a**), including the non-mandatory sections, save where modified by these Rules.

(2) There will be no discovery or disclosure, except that the Arbitrator has the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant,

(**a**) 1996 c. 23.

specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and procedure—

(a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

Costs

6.—(1) The costs of the Arbitration must include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Subject to sub-paragraph (3), the Arbitrator must award recoverable costs on the general principle that each party should bear its own costs.

(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be confidential and will only be publicly disclosed where required by law or with the agreement of both parties.

(2) The Arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph prevents any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of a new gas-fired power station with carbon capture technology at Connah's Quay, Flintshire. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights. A copy of the plans and book of reference referred to in this Order and certified in accordance with article 46 (certification of plans etc.) may be inspected by appointment free of charge at the offices of Uniper UK Limited at Compton House, 2300 The Crescent, Birmingham Business Park, Birmingham, England, B37 7YE.