

# Wylfa Newydd Project

## 3.3 Explanatory Memorandum

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# EXPLANATORY MEMORANDUM TO THE WYLFA NEWYDD (NUCLEAR GENERATING STATION) ORDER 201[•]

201[•] No. 0000

## 1. Introduction

- 1.1 Horizon Nuclear Power Wylfa Limited ("the **undertaker**") has made an application (the "**Application**") to the Secretary of State for a development consent order ("**DCO**") to authorise the construction, operation and maintenance of the Wylfa Newydd DCO Project (which is described at Schedule 1 (Authorised Development) to the draft DCO which accompanies the Application and is entitled the Wylfa Newydd (Nuclear Generating Station) Order 201[•] (the "**Order**")).
- 1.2 The purpose of an explanatory memorandum is to assist the Examining Authority, Interested Parties and the Secretary of State in understanding the rights and powers sought within a DCO. This Explanatory Memorandum therefore explains the purpose and effect of each article of, and schedule to, the Order, as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations (S.I. 2009/2264) (as amended). In particular, it sets out (as per the Planning Inspectorate's *Advice Note 15: Drafting Development Consent Orders*):
  - 1.2.1 the source of the provision (whether it is bespoke or based on a granted DCO);
  - 1.2.2 the section/Schedule of the Planning Act 2008 ("**2008 Act**") under which it is made; and
  - 1.2.3 the reasons why the article is relevant to the Proposed Development and considered important/essential to the delivery of the Wylfa Newydd DCO Project.
- 1.3 This document should be read alongside the Order and the various documents submitted in respect of the Application.
- 1.4 In preparing the Order, we have had regard to a number of granted DCOs. The purpose of this exercise was to understand the nature and scope of powers and rights that have been included in granted DCOs relating to large-scale generation, highway, marine, and connection infrastructure projects – all of which are key elements of the Wylfa Newydd DCO Project (see paragraph 2.3 below). Where there are similarities between the Wylfa Newydd DCO Project and these granted DCOs (such as the need to acquire land and rights or to undertake works within streets), we have included the analogous powers and rights within the Order, or explained where we have departed.

1.5 Where we have relied on a precedent DCO, we have identified which DCO the drafting in the Order has been based on as part of the justification as to why the inclusion of the power is appropriate and important for the delivery of the Wylfa Newydd DCO Project. We have also followed the guidance provided by the Planning Inspectorate in *Advice Note 15* and *Advice Note 13: Preparation of a Draft Order Granting Development Consent and Explanatory Memorandum*, and the guidance on drafting statutory instruments produced by the Office of Parliamentary Counsel.

## **2. The Purpose of the Order**

2.1 Section 31 of the 2008 Act provides that a DCO is required to the extent that a development is, or forms part of, a nationally significant infrastructure project ("NSIP").

2.2 The Wylfa Newydd DCO Project is an NSIP under sections 14(1)(a) and 15(2) of the 2008 Act because it relates to an onshore generating station with a capacity of more than 50 megawatts ("MW") in Wales. The Wylfa Newydd DCO Project will have up to 3,100MW of total installed generation capacity. Accordingly, the undertaker has made the Application in order to secure development consent for the Wylfa Newydd DCO Project. The Order is part of the Application.

### ***Development authorised by the Order***

2.3 The Wylfa Newydd DCO Project comprises the following principal elements:

#### **2.3.1 The Power Station:**

- (a) the proposed new nuclear power station at Wylfa, including two UK Advanced Boiling Water Reactors, the Cooling Water System, supporting facilities, buildings, plant and structures, radioactive waste and spent fuel storage buildings;
- (b) other on-site development: including landscape works and planting, drainage, surface water management systems, public access works including temporary and permanent closures and diversions of public rights of way, new Power Station Access Road and internal site roads, car parking, construction works and activities including construction compounds and temporary parking areas, laydown areas, working areas and temporary works and structures, temporary construction viewing area, diversion of utilities, perimeter and construction fencing, and electricity connections;
- (c) Marine Works comprising:
  - (i) Permanent Marine Works: the Cooling Water System, the Marine Off-loading Facility, breakwater structures, shore protection works, surface water drainage outfalls, waste water effluent outfall (and associated drainage of surface water and waste water effluent to the sea), fish recovery and return system, fish deterrent system, navigation aids

and Dredging;

- (ii) Temporary Marine Works: temporary cofferdams, a temporary access ramp, temporary navigation aids, temporary outfalls and a temporary barge berth;
- (d) an electrical connection to the National Grid substation (the "**Grid Connection**".)

2.3.2 Off-Site Power Station Facilities: comprising the Alternative Emergency Control Centre, Environmental Survey Laboratory and a Mobile Emergency Equipment Garage;

2.3.3 The Associated Development comprising works included in the DCO which facilitate the delivery of the NSIP, and which principally include:

- (a) a Site Campus within the Wylfa Newydd Development Area ("**WNDA**") providing accommodation for construction workers;
- (b) a temporary Park and Ride facility at Dalar Hir for construction workers ("**Park and Ride**");
- (c) a temporary Logistics Centre at Parc Cybi ("**Logistics Centre**");
- (d) five sections of A5205 Off-Line Highway Improvements along the A5025; and
- (e) Wetland habitat creation and enhancement works as compensation for any potential impacts on the Tre'r Gof Site of Special Scientific Interest ("**SSSI**") at the following sites:
  - (i) Tŷ Du;
  - (ii) Cors Gwawr; and
  - (iii) Cae Canol-dydd.

2.4 Section 115(1) of the 2008 Act provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The *Department of Communities and Local Government's Planning Act 2008 Guidance: on associated development applications* for major infrastructure projects describes associated development as being:-

*"typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project" and which "requires a direct relationship between associated development and the principal development".*

2.5 Associated development should therefore either support the construction or operation of the authorised development or help address its impacts; it should not be an aim in itself but subordinate to the authorised development for which development consent is being sought.

2.6 Prior to enactment of the Wales Act 2017, the 2008 Act did not permit the majority of the associated development to be included in a DCO for an NSIP in

Wales.

- 2.7 Following the enactment of the Wales Act 2017, section 43 of the Wales Act 2017 inserted a new sub-section (4A) into section 115 of the 2008 Act which states that development consent may be granted for development that is associated with the construction of a generating station "that is (when constructed...)...expected to be within section 15(3A)" of the 2008 Act. Section 15(3A), which will come fully into force on 1 April 2019, provides that Welsh generating stations (excluding wind) that are more than 350MW will require development consent under the 2008 Act. Although section 15(3A) is not fully in force, it is currently in force for the purposes of enabling associated development to be included within a Welsh DCO under section 115 of the 2008 Act. As the Power Station, once constructed, is expected to be more than 350MW, the Associated Development listed above in paragraph 2.3.3 is now being formally sought as part of the Application.
- 2.8 Section 120(3) of the 2008 Act which provides that an order can make a provision "relating to, or to matters ancillary to, the development" and makes it clear (section 120(4)) that such matters 'include', in particular, provision for or relating to any of the matters listed in Part 1 of Schedule 5 of the 2008 Act. Section 120(5) also allows a DCO to apply, modify or exclude a statutory provision necessary to give effect to the powers in the DCO; include any provision that appears necessary or expedient to giving full effect to any other provision in the DCO; and include any incidental, consequential or transitional provisions or savings.

### **3. Part 1 – Preliminary**

- 3.1 Articles 1 (Citation and commencement) and 2 (Interpretation) of the Order contain preliminary provisions.

#### ***Article 1 (Citation and commencement)***

- 3.2 Article 1 provides for the commencement and citation of the Order.

#### ***Article 2 (Interpretation)***

- 3.3 The purpose of article 2 is to define various terms used in the Order. The definition of "authorised development" encompasses the NSIP and associated development authorised by the Order (as described in Schedule 1) and should be read in that context in this memorandum.
- 3.4 Particular definitions to note include:

- 3.4.1 "*commence*" is a new definition and incorporates the definition of a "material operation" under section 155 of the 2008 Act. The term 'commence' is used in a number of requirements in Schedule 3 (Requirements) of the Order. Many requirements express themselves as needing to be discharged before development can 'commence'; these types of requirement are sometimes referred to as pre-commencement requirements. The effect of the exclusion of various activities from the

term 'commence' is that those works can be carried out by the undertaker before a pre-commencement requirement is discharged.

Excluded from this definition are operations consisting of site preparation and mobilisation works for all works other than Work No.12; pre-construction archaeological works; environmental surveys and monitoring; removal of hedgerows, trees and shrubs; investigations for the purpose of assessing ground conditions; diversion or laying of services; remedial work in respect of any contamination or adverse ground conditions; receipt and erection of construction plant and equipment; the temporary display of site notices and advertisements; and erection of temporary buildings, structures or enclosures related to any of the works mentioned above. These works are authorised under Schedule 1 of the Order, as well as specific articles of the Order (including articles 23 (Protective work to buildings), 24 (Authority to survey and investigate land), 75 (Felling or lopping of trees and removal of hedgerows)).

These excluded works within the definition comprise investigative, remedial, and mobilisation/preparatory works that will be undertaken at a stage where the detailed design of the authorised development, sufficient to enable all pre-commencement requirements to be discharged, is unlikely to have been completed. The ability to undertake these works ahead of Main Construction is of critical importance to the undertaker in the context of the anticipated construction programme. Some of the excluded works would allow the undertaker to establish construction and welfare buildings and facilities, lay down temporary electricity and water services for construction, undertake surveys, and transport earthworks and construction plant and equipment, in advance of programmed construction works commencing within the Order Limits. The effect of this 'carve out' is that these specific works can be carried out by the undertaker without any specific, pre-commencement requirements in Schedule 3 to the Order needing to be discharged.

We note the Planning Inspectorate's comments in Advice Note 15 regarding the issue around the use of the term "commence" within DCOs. The Environmental Statement has concluded that the excluded works are unlikely to have significant environmental effects. For this reason, the undertaker considers that the exclusion of these works from the definition is appropriate. In any event, these works will still be controlled by the overarching Code of Construction Practice ("**CoCP**") as well as the relevant sub-CoCP which the undertaker will be required to comply with in carrying out the authorised development under the Schedule 3 of the Order. These CoCPs specify measures relating to the establishment of construction compounds, and therefore will effectively control these 'carve out' works.

Thus, there is effective control over these excluded works which are excluded in order to allow the timely and efficient construction of the authorised development.

3.4.2 Definitions of the "Access Road Plan", "Book of Reference", "Wylfa Newydd CoCP", "Construction Method Statement", "Wylfa Newydd CoOP", "Design and Access Statement", "Detailed Design Drawings", "Environmental Statement", "Environmental Statement Addendum", "Land Plans", "Landscape and Habitat Management Strategy", "Order Limits Plans", "Parameter Plans", "Key Mitigation Phasing Strategy", "Rights of Way Plans", the suite of sub-CoCP documents, "Workforce Management Strategy", and "Works Plans" have been included as these are documents that will be certified under article 76 (Certification of plans, etc.) and Schedule 18 (Certified Documents) of the Order and the key mechanisms by which the controls and mitigation relating to the authorised development will be secured.

3.4.3 A new definition for "*discharging authority*" has been added so that it is clear that Isle of Anglesey County Council ("IACC") will be the discharging authority in respect of any Requirements in Schedule 3 of this Order relating to land above the mean high-water springs ("MHWS"), and NRW will be the discharging authority in respect of any Requirements relating to land seaward of the MHWS and the Marine Works. This distinction has been made because NRW will be responsible for granting and discharging conditions for the marine licence which will enable the Marine Works, and therefore it is the most appropriate entity to be discharging the requirements under Schedule 3 of the Order on land seaward of the MHWS (in consultation, with IACC). Where a marine structure is located above the MHWS, IACC will be the discharging authority for that part in consultation with NRW. Each of these entities have been identified within the Requirements; so, this definition is provided for avoidance of doubt and for Schedule 19 (Procedure for approvals, consents and appeals) of the Order.

3.4.4 "*maintain*" which includes the power to "inspect, repair, adjust, alter, improve, landscape, preserve, remove, reconstruct, refurbish, relay, extend, enlarge or replace" any part of the authorised development. The words "to the extent assessed in the Environmental Statement" have also been included within the definition to prevent maintaining the authorised development in a manner or to a degree which has not been assessed under the parameters of the Environmental Statement or varies the authorised development. This ensures that any maintenance activities remain within the scope of the authorised development that has been assessed in the Environmental Statement.

The undertaker considers this definition to be appropriate to enable itself to properly maintain and protect the authorised development throughout the 60-year operational period (for example, maintenance activities will inevitably include the need to refurbish or reconstruct operational buildings or replace components of the Power Station following technological advances or damage). Maintenance activities would also be subject to other controls within the Order, such as the protective provisions. Precedent for this article can be found in other generation DCOs concerning infrastructure with a similar life-cycle, such as article

2 of the North London Heat and Power Generating Station Order 2017 (S.I. 2017/215) and article 2 of the National Grid (Hinkley Point C Connection Project) Order 2016 (S.I. 2016/49).

- 3.4.5 "*Order Land*" is defined as meaning the land shown on the Land Plans and identified in the Book of Reference. The Order Land is not limited to land which is to be acquired but also includes both land owned by and third-party land which the undertaker is seeking to acquire rights and land for temporary possession for the construction, maintenance and operation of the Wylfa Newydd DCO Project.
- 3.4.6 "*Order Limits*" is defined as those limits shown on the Order Limits Plans and Works Plans, which is the extent of the area within which the authorised development may be carried out (subject to some minor exceptions discussed below).
- 3.4.7 The definition of "*street*" transposes the definition of "*street*" under section 48 of the New Roads and Street Works Act 1991 ("**1991 Act**") so that it is clear that footpath and highways are included within the definition of street under the Order. The definition under the 1991 Act has also been expanded to also include any viaduct, overpass or underpass which a street passes over as these elements form part of the authorised development (Work No.s 9A, 9B and 10B).
- 3.4.8 "*SPC permission*" refers to any application for site preparation and clearance ("**SPC**") granted to the undertaker under the Town and Country Planning Act 1990 ("**TCPA**"). This definition relates to article 5 (Effect of the Order on the site preparation permission) which provides a mechanism to enable the undertaker to switch between works undertaken under an SPC permission and the DCO in relation to SPC works.
- 3.4.9 "*specific associated development works*" is defined as Work No.s 3, 6 and 7 of the authorised development which relate to the Site Campus, Park and Ride Facility at Dalar Hir and the Logistics Centre at Parc Cybi. As these works will be decommissioned prior to, or on completion of, construction of the Power Station, article 81 (Amendment of local legislation ) and Schedule 20 (Miscellaneous Controls) of the Order modifies the section 57(2) of the TCPA so that the land used for these specific associated development works will revert to its previous use (i.e. agricultural use) once these works have been decommissioned.
- 3.4.10 "*subsoil*" is defined as any stratum of land that is below the surface of the ground.
- 3.4.11 "*undertaker*" is defined as Horizon (or any other person who has the benefit of the Order under articles 8 (Benefit of Order) and 9 (Consent to transfer benefit of Order) (subject to certain restrictions discussed below)).

- 3.5 Article 2(2) clarifies that references in the Order to rights over land includes the rights to do anything in, on or under the land or in the airspace above and that the imposition of restrictions also includes restrictive covenants over the Order Land.
- 3.6 Articles 2(3) and (4) clarify that measurements within the Order and Book of Reference are approximate. The purpose of this is to ensure that if, upon the works, it transpires that the distances, directions and lengths are marginally different to those listed in the Order or the Book of Reference, there is no issue over whether the works are permitted by the Order. The provision allows for a small tolerance with respect to any distances, directions and lengths, although the majority of works will take place within the limits of deviation and the Order Limits.
- 3.7 Articles 2(5) to (9) provide further explanation as to how references in the Order to letters or numbered points, numbered works, documents or plans, and other references are to be construed.

#### **4. Part 2 - Principal Powers**

##### ***Article 3 (Development consent, etc. granted by Order)***

- 4.1 This article grants development consent for the authorised development to be constructed, operated and maintained within the Order Limits, subject to the Requirements in Schedule 3 of the Order. This article is provided for under section 115(1) of the 2008 Act.
- 4.2 As noted above, the authorised development comprises both an NSIP and associated development. The power to construct, operate and maintain the authorised development is subject to the other provisions of the Order, including the Requirements in Schedule 3 of the Order.

##### ***Article 4 (Limits of deviation)***

- 4.3 As the Wylfa Newydd DCO Project involves both linear (for example, the A5025 Off-line Highway Improvements) and non-linear works (for example, the Logistics Centre at Parc Cybi) this article has enables limits of deviation for both work types which define the maximum extent within which the authorised development can be built. The ability to include such power is contained in section 120(3) of the 2008 Act which enables an order granting development consent to make provision relating to, or to matters ancillary to, the development for which consent is granted.
- 4.4 Article 4(1) provides that, subject to the Requirements in Schedule 3 and articles 11 (Power to alter layout, etc., of streets) and 12 (Street works) in the Order, the undertaker must construct, maintain and operate the authorised development within the Order Limits and may deviate within the following limits of deviation:
  - 4.4.1 For non-linear works, the works may deviate laterally within the confines

of the limits of deviation shown on the Works Plans. The limits of deviation on the non-linear Works Plans typically follow the boundary of the work area which means that the undertaker has the ability to undertake the works anywhere within that boundary.

4.4.2 For linear works, lateral limits of deviation are defined around the centre line of the works (rather than the boundary of the work area) and the undertaker may deviate laterally from the centre line shown on the Works Plans by up to 2 metres either side of the centre line of that work as shown on the Works Plans. On the Works Plans, these are shown as the outermost boundary to which the centre line of the identified linear work can move to.

4.5 In respect of vertical deviations, article 4 specifies an upwards vertical limit of deviation of 0.5 metres from the levels shown on the Detailed Design Drawings for Works No. 8, 9, 10 and 11 (excluding the elevated viaduct, overbridge and associated underpasses comprised in those works). While 0.5 metres is considered to be an appropriate amount of deviation, paragraph 1(b)(ii)(a) provides that this limit may be exceeded where the Secretary of State certifies that an excess of these limits would not result in any new or materially worse effects from those assessed in the Environmental Statement.

4.6 All other non-linear works, and the elevated viaduct and associated underpass comprised in Work No. 9, 10 and 11 have, in the first instance, complete flexibility in terms of heights. While article 4 may appear to give the undertaker an uncontrolled level of flexibility in respect of these works, vertical limits are actually controlled through a defined set of parameters under the Requirements in Schedule 3 of the Order. These parameters, to which article 4 is subject, have the practical effect of curtailing the undertaker's powers under article 4 by placing controls on the location of certain buildings, structures and works (i.e. they can only be located in a defined zone), as well as imposing maximum and minimum dimensions (such as heights) of certain elements of the authorised development.

4.7 The use of both limits of deviations and parameters is intended to bring greater clarity around how the construction of the authorised development will be controlled whilst still providing the undertaker with a necessary, but proportionate, degree of flexibility. This degree is appropriate given the scale and complexity of the authorised development (and its individual components) as it reduces the risk that the authorised development as approved cannot later be implemented due to unforeseen engineering or geological reasons.

4.8 While the drafting of this article is bespoke to the Wylfa Newydd DCO Project requirements, limits of deviation have been included other granted DCOs, including article 5 of the National Grid (Hinkley Point C Connection Project) Order 2016, article 4 of the North London Heat and Power Generating Station Order 2017 (S.I. 2017/215), and article 5 of the Brechfa Forest West Wind Farm Order 2013 (S.I. 2013/586). All of these granted DCOs included a similar level of flexibility in the construction of the relevant infrastructure.

## ***Article 5 (Effect of the Order on the site preparation permission)***

4.9 Article 5 has been inserted to provide for the situation where the undertaker may seek to re-apply for planning permission for the site preparation and clearance works within the WNDA. If that occurred, article 5 would provide a mechanism by which the undertaker could implement the planning permission but then decide to switch to undertaking site preparation and clearance pursuant to Work No.12 of the DCO.

4.10 Article 5 therefore contains provisions which manage the relationship, and transition, between the planning permission and Work No.12 in relation to the SPC works. If the undertaker had, and implemented a planning permission for SPC works but sought to switch to undertaking SPC works under the Order, it would be required to serve notice on IACC. Once notice has been served, the undertaker would be required to cease all works under the planning permission and all conditions of the planning permission would become unenforceable (except to the extent that a breach of occurred prior to notice being served by the undertaker). The undertaker would then be required to start discharging under the SPC Requirements in Schedule 3.

4.11 The power to render the planning permission unenforceable through article 5 is provided for under section 120(3) of the 2008 Act, which provides that an Order may make a provision relating to the development for which consent is granted, together with paragraph 11 of Part 1 of Schedule 5 of the 2008 Act, which relates to the exclusion of obligations or liability in respect of acts or omissions. However, as noted in paragraph 4.10, article 5(2)(b) provides that site preparation conditions will be enforceable to the extent that any breach occurred prior to notice being served.

4.12 In order to avoid the situation where the undertaker is required to discharge the same condition under both instruments, article 5(6) provides that IACC and the undertaker may agree that any details, plans, actions, documents or other matters have been approved, agreed or undertaken pursuant to one of the conditions of the SPC permission may have deemed approval for the purposes of the SPC Requirements. This would include for example, any approved schemes, pre-commencement surveys undertaken or licences obtained by the undertaker under the SPC permission.

4.13 This article follows the approach taken in article 4 of the Hinkley Point C (Nuclear Generating Station) Order 2013 (S.I. 2013/648), which also had early works being twin-tracked through the DCO and TCPA process, except that it clarifies in sub-paragraph (5) that where a switch occurs to SPC Works under the Order the detailed design drawings for Work No.12 will apply, not those plans under the SPC permission.

4.14 Article 5 is provided for under section 120(3) of the 2008 Act, which enables an order granting development consent to make providing relating to, or to matters ancillary to, the development for which consent is granted.

### ***Article 6 (Maintenance of the authorised development)***

4.15 This article provides, for the avoidance of doubt, that the undertaker has the power to maintain the authorised development at any time, except to the extent any other provisions in the Order or any agreement made under the Order provide otherwise. This article has been inserted for the avoidance of doubt and in accordance with section 120(3) and is a matter specifically identified in paragraph 5 of Schedule 5 to the 2008 Act, which relates to the operation of generating station. It has also been included to ensure that Horizon has the benefit of the statutory authority conferred by section 158 of the 2008 Act when maintaining the development authorised by the Order and to provide clarification that maintenance works fall within "development forming part of the NSIP" under section 31 of the 2008 Act or "associated development" under section 115 of the 2008 Act.

4.16 Identical articles have been included in other generation DCOs, which have a similar operational period as the Wylfa Newydd DCO Project, including article 5 of the North London Heat and Power Generating Station Order 2017, article 5 of the Hinkley Point C (Nuclear Generating Station) Order 2013, and article 4 of the Wrexham Gas Fired Generating Station Order 2017 (S.I.2017/766).

4.17 As noted above, the definition of "maintain" in article 2 is considered appropriate to enable Horizon to properly maintain the authorised development during its 60 years of operation so that the authorised development can be operated safely and in compliance with nuclear regulations. Further detail on this definition is set out above in paragraph 3.4.4.

### ***Article 7 (Authorisation of use)***

4.18 Article 7 confirms that, once constructed, the undertaker has the authority to operate and use the authorised development. However, this power does not relieve the undertaker of its obligation to obtain other operational consents that may be needed in addition to the Order (for example, electricity or nuclear site licences) as expressly stated in sub-paragraph (2).

4.19 This article has been inserted for the avoidance of doubt and in accordance with section 120(3) and is a matter specifically identified in paragraph 5 of Schedule 5 to the 2008 Act, which relates to the operation of generating station. It also reflects section 140 of the 2008 Act which provides that a DCO for the construction of a generating station may also include a provision authorising the operation of a generating station and has been included to ensure that the undertaker has the benefit of the statutory authority conferred by section 158 of the 2008 Act when operating the development authorised by the Order.

4.20 Similar articles have been included in other generation DCOs including article 6 of the North London Heat and Power Generating Station Order 2017, article 7 of the Glyn Rhonwy Pumped Storage Generating Station Order 2017 (S.I. 2017/330), and article 5 of the Hirwaun Generating Station Order 2015 (S.I. 2015/1574) (although the explicit wording has minor variations to article 7 of the Order).

## ***Article 8 (Benefit of Order)***

4.21 This article identifies that the undertaker has the sole benefit of the powers and rights under the Order. The "undertaker" is defined in article 2 as Horizon or the person who has the benefit of the order in accordance with article 9. This article overrides section 156(1) of the 2008 Act (as permitted by 156(2) of the 2008 Act) which limits the benefit of the Order to anyone with an interest in the land. Due to the nature of the authorised development, it is entirely appropriate that the powers under the Order are only exercised by the undertaker and not any other person with an interest in the Order Land (unless provided under article 9).

4.22 Precedent for the use of this model provision can be found in other granted DCOs, such as in article 9 of the M20 Junction 10a Development Consent Order 2017 (S.I. 2017/1202), article 6 of the Keuper Underground Gas Storage Facility Order 2017, and article 7 of the North Wales Wind Farms Connection Order 2016 (S.I. 2016/818).

## ***Article 9 (Consent to transfer benefit of Order)***

4.23 While the undertaker has been identified as having the sole benefit of the Order under article 8, article 9 anticipates that there may be circumstances where the undertaker seeks to transfer its rights to another party. This article enables the rights and powers under the Order to be transferred to another body with the consent of the Secretary of State, and, in limited situations, without consent provided the transferee or lessee holds certain qualifications.

4.24 Article 9(1) provides that the consent of the Secretary of State must be obtained before the benefit of the Order and related statutory rights may be transferred to another person or body. This is to ensure that any transferee or lessee is deemed appropriate and qualified by the Secretary of State to take control of the authorised development under the Order.

4.25 Article 9(3) makes it clear that the transferee or lessee will be subject to the same restrictions, liabilities and obligations as the undertaker, "including development consent obligations within the meaning of s106 of the 1990 Act". This is to clarify that the transferee or lessee would also be subject to obligations under "an agreement entered into by the undertaker pursuant to section 106 of the TCPA". As the undertaker will be entering into a section 106 agreement with local planning authorities, this provision is necessary to ensure that the transferee complies with all obligations etc. that have been imposed on the undertaker, as well as ensuring that the undertaker is released from liability upon transfer (given that it would no longer be involved in the authorised development). This approach is standard under section 106 agreements.

4.26 Article 9(4) makes it clear that where the Order is transferred to a third party under this article, where relevant, the new undertaker will be required to provide an equivalent guarantee or alternative form of security that was in place at the time of transfer under article 83 of the Order (Guarantees in respect of payment of compensation).

4.27 The wording of this article reflects the approach taken in article 8 of the Glyn Rhonwy Pumped Storage Generating Station Order 2017..

***Article 10 (Defence to proceedings in relation to statutory nuisance)***

4.28 Article 10 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 11 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the exclusion of liability in respect of acts or omissions.

4.29 It provides that no statutory nuisance claims under the Environmental Protection Act 1990 can be brought against the undertaker in respect of noise, vibration, light, and dust effects, if those effects were created during the construction, maintenance or operation of the authorised development and:

4.29.1 notice has been given under section 60 (control of noise on construction sites) or consent has been obtained under section 61 of the Control of Pollution Act 1974 (“**CoPA**”) (prior consent for work on construction sites);

4.29.2 controls and measures relating to these effects have been set out under the approved CoCP, CoOP and relevant sub-CoCP under this Order, a scheme approved under the Requirements in Schedule 3 or Schedule 21 or in accordance with noise and lighting levels under an environmental permit relating to the operation of the authorised development; or

4.29.3 where such effects cannot reasonably be avoided.

4.30 Article 10(1)(a)(ii) includes reference to controls and measures set out under the CoCP, CoOP and relevant sub-CoCPs, approved schemes under the Requirements (which IACC has approval rights in respect of) as well as those controls set out within any environmental permit granted for the operation of the authorised development. This addition is to ensure that it will also be a defence if the effects are in compliance with those approved measures and limits.

4.31 A similar approach has been followed in other DCOs where the authorised development was being constructed in close proximity to residential and commercial properties, such as article 9 of the North London Heat and Power Generating Station Order 2017, article 8 of the Keuper Underground Gas Storage Facility Order 2017 and article 7 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384). Article 10 modifies these precedent articles to include references to the potential nuisances under the Environmental Protection Act 1990 arising from the Wylfa Newydd DCO Project and the control documents specific to the Wylfa Newydd DCO Project and does not limit this defence to the construction period only (as this was a bespoke insertion in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014).

## 5. Part 3 – Powers in respect of Streets

### ***Article 11 (Power to alter layout etc., of streets)***

- 5.1 Article 11 provides the undertaker, subject to certain restrictions, with the power to alter or carry out works within a street. This article is provided for under section 120(3) and (4) together with paragraph 15 of Part 1 of Schedule 5 of the 2008 Act, namely the carrying out civil engineering or other works.
- 5.2 Article 11(1) provides the undertaker with wide powers to enter onto, alter the layout of a street or carry out any works (either temporarily or permanently) identified in Schedule 5 of the Order (Streets subject to the alteration of layout) for the purposes of constructing and maintaining the authorised development. Consent of the street authority is not required for any works proposed to a street identified in Schedule 5.
- 5.3 Article 11(2) provides a broader power to alter the layout of or carry out any works in any street within the Order Limits (but has not been listed in Schedule 5) or outside the Order Limits, provided the consent of the street authority is obtained. This power is necessary to provide the undertaker with the flexibility to undertake works on these streets if required during construction of the authorised development. For example, works on streets outside the Order Limits will be required to tie in the A5025 Off-line Highway Improvements to the existing road alignment. This power is considered appropriate as they can only be undertaken with the consent of the street authority.
- 5.4 Article 11(2) also sets out a broad range of works that the undertaker may undertake on any street including altering the level or increasing the width of any street, footpath or carriageway, making and maintaining passing places, altering existing facilities in streets (for example, bus infrastructure) and undertaking works to manage and protect pedestrians (for example, creating pedestrian crossings). The works listed in article 11(2) include those that are necessary to enable the tie-in of the A5025 Off-line Highway Improvement Works (Works No.8-11); however, do not limit the scope of works that can be undertaken by the undertaker on streets listed in Schedule 5.
- 5.5 Article 11(3) provides that any street altered temporarily under this article must be restored to the reasonable satisfaction of the street authority.
- 5.6 Article 11(5) provides that where a street authority fails to respond to an application for consent under article 11(2) within 56 days of the application being made, it is deemed to have given its consent under article 11(4). This article is considered necessary to enable the undertaker to exercise its powers and undertake works in an efficient and expedient manner and to give full effect to the power to carry out the authorised development. It is important to note that the deemed approval provision does not remove the street authority's ability to refuse the application; it just imposes a deadline by which they must exercise their statutory functions.
- 5.7 The inclusion of deemed approval, which appears in a number of other articles in the Order, is considered reasonable and aligns with the objectives and

scheme of the 2008 Act to ensure efficient delivery of NSIPs. Inclusion of similar timeframes for decisions, and deemed approval, under the Order ensures that the undertaker can deliver the Wylfa Newydd DCO Project in an efficient manner and the intention of the 2008 Act is not undermined. A number of granted DCOs, such as National Grid (Hinkley Point C Connection Project) Order 2016, have been granted with deemed approval provisions to prevent consenting authorities failing to provide any response within a reasonable time to an applicant's request for approvals.

5.8 Similar provisions to article 11 have been included in other generation and infrastructure DCOs which also required works within public streets, such as article 8 of the Hirwaun Generating Station Order 2015, article 12 of the National Grid (Hinkley Point C Connection Project) Order 2016, article 10 of the Meaford Gas Fired Generating Station Order (S.I. 2016/779) and article 11 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, although the works and timing for approvals has been amended in article 11 to reflect the scale of the works anticipated under the Wylfa Newydd DCO Project. Article 11 does not set out the provisions of the 1991 Act that have been disapplied (as the Thames Tideway Order did) as this is set out under article 13 of the Order.

### ***Article 12 (Street works)***

5.9 Article 12 provides that the undertaker can undertake works in, on, or under those streets identified in Schedule 6 (Streets subject to street works) for the purposes of the authorised development. Consent from the street authority is not required for works on a street identified in Schedule 6 (Streets subject to street works).

5.10 Article 12(1) outlines a range of street works that may be carried out by the undertaker on streets identified in Schedule 6 of the Order and within the Order Limits. Such works include, for example, removing, relocating or replacing street furniture and bus infrastructure, works to improve sightlines, hard and soft landscaping, relining and replacement of road markings, and the removal and provision of permanent and temporary signage. These works are necessary to carry out the authorised development under article 3 (Development consent, etc. granted by Order), in particular the A5025 Off-line Highway Improvements.

5.11 Article 12(2) provides the undertaker with a broad power to undertake street works on any street whether or not it is located within or outside the Order Limits, with the consent of the relevant street authority. This is considered appropriate as the authorised development is not contiguous and so the undertaker may need to undertake works on a street between geographically separate Order Limits for the purposes of the authorised development. For example, works to improve sightlines (i.e. cutting back obstructions, such as trees and hedges, that impact on visibility of the authorised development), to tie in the Off-line Highway Improvements into the existing highway, or to install traffic signage on approach roads to the Order Limits to ensure the safety of users of the authorised development, or to reflect changes in speed conditions. This power is sufficiently restricted through the requirement for the street

authority must provide its consent to such works.

- 5.12 Where a street authority's consent is required under article 12(2), article 12(3) includes a deemed consent provision whereby consent is deemed granted where the street authority fails to provide a response within 56 days of the application being made. As noted above at paragraph 5.7, this is considered necessary to enable the undertaker to exercise its powers and undertake works in an expedient manner; yet still provides the street authority with a sufficient amount of time to either approve or reject the application.
- 5.13 Article 12 does not include any clarification that the power granted in article 12(1) is a "statutory right" for the purposes of the 1991 Act. This is because a statutory right for the purposes of the 1991 Act is defined as including any right conferred by an enactment (including subordinate legislation), this includes a DCO made as a Statutory Instrument. Section 117(4) of the 2008 Act requires certain DCOs to be made as Statutory Instruments – including DCOs that create byelaws (see article 61) and those amending legislation (see articles 80 and 81). As the Order will be made as a Statutory Instrument this clarification is unnecessary.
- 5.14 Article 12 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it is required to enable the undertaker to construct and maintain the authorised development. Equivalent provisions can be found in other granted DCOs which also required works within public streets, such as article 10 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. However, article 12 increases the range of listed street works, includes a deemed approval provision, and excludes sub-paragraphs (3) and (7) of the Thames Tideway Order as these are not considered relevant to the Wylfa Newydd DCO Project.

### ***Article 13 (Application of the 1991 Act)***

- 5.15 This article sets out how the 1991 Act will apply to the authorised development. Precedent for this approach can be found in two other generation DCOs, the Glyn Rhonwy Pumped Storage Generating Station Order 2017 and the Hinkley Point C (Nuclear Generating Station) Order 2013.
- 5.16 Article 13(1) makes it clear that specific works, such as the reconstruction, widening, substantial levelling of the highway, carried out by the undertaker on the highway will be treated as if they are "major highway works" carried out by a highway authority for the purposes of Part 3 of the 1991 Act (street works in England and Wales). This provision ensures that the cost sharing provisions under section 85 of the 1991 Act (sharing of cost of necessary measures) applies to the Order, in particular, articles 34 (Rights under or over streets), 38 (Apparatus and rights of statutory undertakers in stopped-up streets) and 39 (Recovery of costs of new connections). It is also intended to apply the co-ordination measures under section 84 of the 1991 Act (measures necessary where apparatus affected by major works) to such works whereby the undertaker and other statutory undertakers must co-operate to secure the efficient implementation of the works.

5.17 Articles 13(2) provide that certain provisions of the 1991 Act listed in article 13(2) will apply to the carrying out of works under articles 11 (Power to alter layout etc. of streets) and 12 (Street works), the permanent or temporary stopping up of streets under articles 14 (Permanent stopping up of streets and extinguishment of private means of access) and 16 (Temporary stopping up of streets). This approach follows the drafting in article 12 of the Glyn Rhonwy Pumped Storage Generating Station Order 2017. The listing of temporary alterations, stopping up and diversions under article 13(2) (c) makes it clear that these works are "street works" for the purposes of the 1991 Act. This would, for example, require the undertaker to make arrangements, so far as practicable, for utilities to gain access to their apparatus.

5.18 Article 13(2) identifies select provisions of Part 3 of the 1991 Act that are to apply to street works carried out under the Order. The practical effect of this is that sections 56, 58, 61-64, 66, 71-74, 77, 78, 82-84 and 86-106 of the 1991 Act do not apply when the undertaker is carrying out street or highway works under the Order. This is considered appropriate as these sections are either not relevant to the authorised development, or will be managed through the powers in the Order, the protective provisions relating to apparatus owned by statutory undertakers in Schedule 15 (Protective Provisions) of the Order, or through the CoCP, CoOP and/or relevant sub-CoCPs which control (through the Requirements) how the undertaker carries out the construction of the authorised development and works in streets and highways. Power to disapply these sections of the 1991 Act is provided for under section 120(5) of the 2008 Act.

5.19 Article 13(3) confirms that the emergency procedures under sections 57 of the 1991 Act apply to any stopping up, alteration or diversion required in an emergency, rather than the procedures set out in sections 54 and 55 of that Act. This enables the undertaker to act quickly in the event of an emergency as it does not first have to comply with notification processes. This provision was also included in article 12 of the Glyn Rhonwy Pumped Storage Generating Station Order 2017.

5.20 Article 13(4) clarifies that references in Part 3 of the 1991 Act to the highway authority in respect of major highway works should be read as references to the undertaker. Article 9 of the Hinkley Point C (Nuclear Generating Station) Order 2013 included a similar clarification.

***Article 14 (Permanent stopping up of streets and extinguishment of private means of access)***

5.21 This article enables the permanent stopping up of any streets or public rights of way ("PRoW") and extinguishment of private means of access ("PMA"). This article is subject to article 38 (Apparatus and rights of statutory undertakers in stopped-up streets) with regards to the rights of statutory undertakers. This ensures that there are sufficient protections in place for statutory undertakers as article 38 prescribes specific processes the undertaker must follow in respect of the removal, relocation or substitution of such apparatus within a street it is seeking to stop up.

5.22 While private rights are extinguished under article 29 (Private rights), this article applies to specific PMAs where alternatives should be provided prior to their extinguishment. Under article 29, these PMAs would be extinguished as soon as the land or right is acquired and thus inclusion of PMAs within this article ensures that, prior to their stopping up, the undertaker must either provide a permanent replacement PMA or, where no substitute PMA is to be provided, meet one of the conditions under paragraph (5) (listed at paragraph 5.23.2 below) prior to the extinguishment.

5.23 Articles 14(1) to (6) provide the undertaker with powers to stop up the streets (both roadways and footpaths), PRoWs and PMAs specified in Schedule 7 (Streets or private means of access to be permanently stopped up or extinguished) to the extent specified in that schedule. The process for stopping up differs depending on whether or not a substitute street, PRoW or PMA will be provided:

5.23.1 Where a substitute street, PRoW or PMA is to be provided, the street, PRoW or PMA must not be stopped up until the substitute or a temporary alternative route has first been provided. In the case of a street, the substitute street or PRoW must be provided to the reasonable satisfaction of the street authority (article 14(2)). The location and extent of any substitute street, PRoW or PMA (as well as details of its substitute) is set out in Part 1 of Schedule 7 (being a street to be stopped up or PMA to be extinguished for which a substitute is to be provided).

5.23.2 Where no substitute street, PRoW or PMA is to be provided, the street or PRoW cannot be stopped up or the PMA extinguished unless at least one of the conditions specified in article 14(5) in relation to land which abuts the street, PRoW or PMA have been met. These conditions relate to instances where the stopping up would have no effect as access to that street, PRoW or PMA has already been precluded (though there not being any right to access to begin with, the owner agreeing to the stopping up, or the undertaker being in possession of the land) or another suitable form of access is available. Those streets, PRoWs and PMAs that are to be stopped up without a substitute street, PRoW or PMA being provided are identified in Part 2 of Schedule 7 (being a street to be stopped up or PMA to be extinguished for which no substitute is to be provided).

5.24 A limited number of PRoWs identified in Schedules 7 and 9 are located outside the Order Limits. These are PRoWs that immediately adjoin the Order Limits for the A5025 Off-line Highway Improvements, or cross through discrete parts of the WNDA and have been proposed to be stopped up for safety and security reasons. These limited PRoWs (and their proposed diversions) are shown on the Rights of Way drawings (WN0902-HZDCO-ROW-DRG-00008, WN0902-HZDCO-ROW-DRG-00009, WN0902-HZDCO-ROW-DRG-00018, and WN0902-HZDCO-ROW-DRG-00029) and identified in Schedules 7 and 9 (where temporary).

5.25 Article 14(3) makes it clear that where the undertaker provides a substitute street, PRoW or PMA, it is not required to provide that substitute to a higher

standard than the street, PRoW or PMA that was stopped up or extinguished. This is to ensure that the undertaker is only required to provide a like-for-like replacement (for example, where the previous path was just a tracks through a field, the undertaker would not be required to provide a formal sealed footpath).

- 5.26 Article 14(6) confirms that that where a street or PRoW is stopped up or PMA extinguished, all rights of way will be extinguished and the undertaker may use that street or PRoW for the purposes of the authorised development (i.e. for construction laydown areas) provided it owns the land on either side of the street, PRoW or PMA. Where someone suffers a loss as a result of any suspension or extinguishment of any private right of way, they will be entitled to compensation.
- 5.27 Article 14(9) clarifies that, for the purposes of this article and Schedule 7, the definition of "street" under article 2 of the Order has been expanded to also include PRoWs. This is to ensure that all types of streets that are affected by the authorised development are subject to these powers.
- 5.28 Article 14 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 17 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the stopping up or diversion of highways, which in this context would include footpaths and bridleways and other forms of "streets" (see definitions of "highway", "footpath" and "bridleway" in sections 328 and 329 of the Highways Act 1980 and "street" in article 2 of the Order).
- 5.29 This article has been based on article 9 of the Silvertown Tunnel Order 2018 (S.I. 2018/574) which also required the stopping up of streets and PMAs for the purpose of that development, although sub-paragraphs (3) and (9) are bespoke for the reasons set out above. Sub-paragraph (5) of article 9 of the Silvertown Tunnel Order 2018 has not been included as this sub-paragraph was bespoke to that project.

#### ***Article 15 (Status of footpaths created or improved)***

- 5.30 This article sets out the status of footpaths, footpaths/cycleways and cycleways that are created or improved under the Order will have upon completion.
- 5.31 Footpaths identified as "footpaths created or improved" in Schedule 8 (Status of footpaths created or improved) will have the status identified in column (3) of that Schedule from the date that the highway authority is satisfied that they have been constructed to a standard specified in a footpath implementation plan, to be agreed with the highway authority.
- 5.32 The footpaths, footways/cycleways and cycleways listed in Schedule 8 are only those that will be constructed at the Associated Development Sites. Footpaths within the WNDA have not been included as the final locations of footpaths within the WNDA will not be known until the operational phase of the Power Station. Prior to operation, the undertaker will be required to submit a final landscape scheme to IACC for approval which will show the proposed final footpath arrangements.

5.33 This article only deals with the status of the public rights of way created or improved (i.e. footpath or bridleway), it does not provide for the extinguishment or re-provisions of public rights of way as this is dealt with under article 14 (Permanent stopping up of streets and extinguishment of private means of access) of the Order. Article 15 is therefore limited to determining the status of these footpaths to avoid duplication with article 14 of the Order.

5.34 Precedent for this article can be found in article 16 of the Hinkley Point C (Nuclear Generating Station) Order 2013 which also had to create a number of footpaths within the Order Limits and therefore proposed a footpath implementation plan to facilitate their construction. This article is also provided for under section 120(3) of the 2008 Act.

***Article 16 (Temporary stopping up of streets)***

5.35 This article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 17 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the stopping up or diversion of highways, which in this context would include footpaths and bridleways and other forms of "street" (see definitions of "highway", "footpath" and "bridleway" in sections 328 and 329 of the Highways Act 1980 and "street" in article 2 of this Order).

5.36 This article allows the undertaker to temporarily stop up, alter, or divert streets or PRoWs shown on the Right of Way Plans and identified in Schedule 9 during, and for the purposes of, the authorised development. It also includes the right to divert any traffic and prevent all persons from passing along the street or PRoWs for any reasonable time. In the event that pedestrian access is prevented, the undertaker must ensure that access is provided to any premises that abut the affected street or PRoWs where there would be no other way to access those premises.

5.37 In the case of streets or PRoWs specified in Schedule 9 (Streets to be temporarily stopped up), these streets or PRoWs may only be stopped up following consultation with the street authority or IACC (in relation to PRoWs). Consent from the street authority is not required for streets or PRoWs that have been specifically identified in Schedule 9. For all other streets and PRoWs (not identified in Schedule 9), these streets or PRoWs may only be temporarily stopped up with the consent of the street authority. Where someone suffers a loss as a result of any suspension of any private right of way, they will be entitled to compensation.

5.38 Article 16(2) allows the undertaker to use any street or PRoW that has been temporarily stopped up, altered or diverted as a temporary working site. This is considered appropriate and necessary to facilitate construction of the authorised development and allow the undertaker to avoid having to acquire additional interests to accommodate additional construction lay-down or compound areas. We note that this approach was taken in article 13(2) of the National Grid (Hinkley Point C Connection Project) Order 2016 and various

orders under the Transport and Works Act 1992.<sup>1</sup>

5.39 Article 16(5)(b) enables the undertaker to temporarily stop up, alter or divert any other street not listed in Schedule 9, whether or not it is within the Order Limits, provided consent from the street authority is obtained. Although the undertaker must seek consent from the street authority prior to exercising any power under this article in relation to a street or PRoW which has not been included in Schedule 9, article 16(5)(b) includes a requirement that such consent cannot be unreasonably withheld or delayed. Article 16(8) also provides that where a street authority fails to respond to any application for consent within 42 days of receiving it, it will be deemed to have given its consent. Precedent for this approach is found in article 13(5) the National Grid (Richborough Connection Project) Order 2017 (S.I. 2017/817), except that it has been modified to provide that such consent must not be unreasonably withheld or delayed. Given that the powers under this article only allow for a temporary interference with a street or PRoW, a deemed approval process under article 16(8) is considered appropriate as it will provide the undertaker the certainty that it will be able to deliver the Wylfa Newydd DCO Project efficiently and is justified in accordance with the reasons set out at paragraph 5.7 above.

5.40 Article 16(6) has been inserted to make it clear that where the undertaker provides a temporary substitute street, PRoW or PMA, it is not required to provide that substitute to a higher standard than the street, PRoW or PMA that was stopped up or extinguished. This is to ensure that the undertaker is only required to provide a like-for-like (for example, where the previous path was just a tracks through a field, the undertaker would not be required to provide a formal sealed footpath). This inclusion is bespoke to the Order.

5.41 Article 16(7) confirms that where the undertaker temporarily stops up any street under this article, it will be required to reinstate the street to its original condition.

### ***Article 17 (Use of private roads for construction)***

5.42 Article 17 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it is required for the construction of the authorised development. It is based on article 13 of the Silvertown Tunnel Order 2018 which was also a development that required the ability to use private roads during construction if required.

5.43 This article authorises the temporary use by persons or vehicles along private roads situated within Order Limits for the purposes of, or in connection with, the construction of the authorised development without the need for the undertaker to acquire a formal permanent easement over that land (for example, there may be private farm roads within the Order Limits that provide key access routes to parts of the authorised development). Where the undertaker seeks to exercise its power under this article, it will be liable to compensate any person who claims

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<sup>1</sup> For example, article 11(2) of the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 (S.I. 2016/73) and article 12(2) of the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 (S.I. 2014/2269).

damage or loss suffered as a result of the undertaker using private roads during construction.

5.44 Article 17 therefore creates a power to 'use' a private road for a temporary period that is proportionate to the limited nature of the use, rather than extinguishing, suspending or permanently interfering with the private rights of landowners (through the imposition of a permanent easement right). This is akin to the powers for temporary use under articles 35 (Temporary use of land for carrying out authorised development) and 36 (Temporary use of land for maintaining authorised development) of the Order; however, it is distinguished because the undertaker does not require exclusive use and possession of the private roads while exercising this power.

### ***Article 18 (Access to works)***

5.45 Article 18(1) provides that the undertaker may, for the purposes of the authorised development, make accesses to the public highway at any locations within the Order Limits, provided the street authority has given its consent following consultation with the highway authority. Article 18 does not have a corresponding schedule which identifies specific locations where accesses will be provided (as shown on a Right of Way Plan). This is because Horizon has provided the majority of its accesses through the identification of its work areas; however, wishes to reserve the right to identify additional locations in the event that access is precluded to a work area.

5.46 Article 18(2) provides that where a street authority fails to notify the undertaker of its decision under article 18(1) within 56 days of receiving the application, the planning authority will be deemed to have granted consent. For the reasons set out above in paragraph 5.7, it is considered that this approach is justified. Precedent for the drafting of this article can be found in article 14(2) of the National Grid (Richborough Connection Project) Development Consent Order 2017 and article 14(2) of the National Grid (Hinkley Point C Connection Project) Order 2016.

5.47 The powers under this article are provided for under sections 120(3) and (4) together with paragraph 15 of Schedule 5 of the 2008 Act as the use of existing access tracks and private roads for construction purposes is clearly related to the construction of the authorised development.

### ***Article 19 (Maintenance of new and altered streets)***

5.48 This article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act as it is required for the maintenance of the authorised development. It also has precedent in article 19 of the Hinkley Point C (Nuclear Generating Station) Order 2013 and article 12 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

5.49 Article 19(1) clarifies that the maintenance of the A5025 Off-Line Highway Improvements and any street that has been altered or subject to street works under articles 11 or 12 of this Order must be undertaken in accordance with the controls in Part 8 of Schedule 15 (Protective provisions). This schedule

requires the A5025 Off-Line Highway Improvements to be maintained by the undertaker against defects at its own cost for a 12 month period following completion, and for all streets to be maintained by the street authority for a 12 month period at the undertaker's expense.

- 5.50 Article 19(3) modifies article 12(3) of the Thames Tideway Order to clarify that where land becomes part of the public highway due to the construction, alteration or diversion of a street under the Order, that land will be dedicated as public highway *immediately* on its completion, unless otherwise agreed with the local highway authority.
- 5.51 Article 19(3) is considered necessary due to the number of works which will directly connect to the existing highway and be open for public use immediately upon completion (for example, the proposed roundabout at the Park and Ride Facility at Dalar Hir and the A5025 Off-line Highway Improvements). Transfer of the ownership of the A5025 Off-Line Improvements (and all associated easements and rights to any associated structures and works) is excluded from this article as it is dealt with through the protective provisions with IACC highways (Schedule 15).).
- 5.52 Article 19(4) and (5) have the effect of incorporating section 58 of the Highways Act 1980 (special defence in action against a highway authority for damages for non-repair of highway) and provide the undertaker with a defence against any action for damages resulting from its failure to maintain the street in accordance with Schedule 15. Under article 19(4), the undertaker will have a defence that it has taken such care as was reasonably required in the circumstances to ensure that the street was not dangerous to traffic.

## ***Article 20 (Agreements with street and highway authorities)***

- 5.53 Article 20 provides that the undertaker, street authorities and/or highway authorities may enter into agreements relating to:
  - 5.53.1 the construction of new streets under the Order;
  - 5.53.2 any stopping up, alteration or diversion of a street under the Order;
  - 5.53.3 the maintenance of the structure of any bridge or tunnel carrying a street over or under any part of the authorised development;
  - 5.53.4 the carrying out of works in a street under articles 11 (Power to alter layout etc., of streets) and 12 (Street works); and
  - 5.53.5 any other works as the parties may agree.
- 5.54 The power to enter into agreements with street authorities and highway authorities is necessary as section 278 of the Highways Act 1980 (agreements as to execution of works) does not relate to the powers under the Order. A similar approach has been taken in granted connection DCOs, such as article 15 of the National Grid (Richborough Connection Project) Development Consent Order 2017 and article 15 of the National Grid (Hinkley Point C

Connection Project) Order 2016, although it has been modified for the works and nature of agreements anticipated for the Wylfa Newydd DCO Project.

5.55 Article 20(2) outlines what matters these agreements may address, except that it expands this list to include two additional matters. These include the agreement on a reasonable timeframe for the completion of works and provision for the maintenance of the structure of any viaduct, overpass, or bridge carrying a street. These additional items have been included in order to facilitate the undertaker in carrying out the authorised development. It is provided for under section 120(3) of the 2008 Act.

### ***Article 21 (Traffic regulation measures)***

5.56 This article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it directly relates to the safe construction of the authorised development. Precedent for this article can be found in article 18 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, article 40 of the National Grid (Hinkley Point C Connection Project) Order 2016 and article 61 of the Silvertown Tunnel Order 2018 (except where modified as set out below). These projects all involved works within the street which required the undertaker to obtain powers to control speeds and use for safety and operational reasons.

5.57 Article 21(1) provides the undertaker with power to impose temporary and permanent traffic regulation orders ("TROs") relating to speed limits and clearways on the roads within the Order Limits identified in Part 1 of Schedule 10 (Traffic Regulation Measures). The TRO must be necessary for the construction and operation of the authorised development and can only be imposed with the consent of the traffic authority (which must not be unreasonably withheld). This power will enable the undertaker to impose speed and waiting restrictions within the Order Limits (for example, preventing parking, stopping or waiting near the entrance to the Off-Site Power Facilities, which will be used during emergency procedures, or ensuring vehicles maintain certain speed levels near vehicle entry and exit points to the Park and Ride or Logistics Centre). This sub-paragraph follows the drafting in the Silvertown Order 2018, except that it only includes those powers that are relevant for the Wylfa Newydd DCO Project.

5.58 Article 21(2) enables the undertaker to impose traffic regulations in respect of any street for the purposes of the authorised development, whether or not within the Order Limits, provided the consent of the traffic authority is obtained. There is one exception to this general approach as set out in article 21(2)(f). Article 21(2)(f) provides that the undertaker may only impose speed restrictions in respect of streets outside the Order Limits of the A5025 Off-line Highway Improvements provided these streets have been listed in Part 2 (Streets subject to traffic regulation measures outside the Order Limits) of Schedule 10.

5.59 The reason these streets have been included in Part 2 of Schedule 10 is to ensure consistency with the TROs proposed in respect of those streets within the Order Limits so that the same restrictions apply along the entire route of the street, as it extends through and outside of the Order Limits. The undertaker

considers this is appropriate given the nature of the A5025 Off-line Highway Improvement Works and the fact that the undertaker will still be required to obtain consent from the traffic authority before imposing a TRO in respect of the streets outside the Order Limits. Article 21(2)(f) is a modification of the drafting in the precedent DCOs to accommodate this right, which is specific to the Wylfa Newydd DCO Project.

- 5.60 Articles 21(3) and (4) set out a notification process whereby the undertaker must notify and advertise its intention to impose a TRO on the road prior to the TRO coming into effect. The notification process differs depending on whether it is a permanent TRO (4 weeks' notice) or temporary TRO (28 days' notice). The proposed timeframes are consistent with those sought under the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and the National Grid (Hinkley Point C Connection Project) Order 2016.
- 5.61 Article 21(5) provides that any order made under this article by the undertaker has the same effect as if it was made by the traffic authority or local authority where the road is located. This gives the order the necessary status under the 1984 Act and provides the undertaker with the statutory power to enforce the order. This power is considered appropriate, given that the consent from the local traffic authority needs to be obtained prior to making an order under this article.
- 5.62 Article 21(7) confirms that where a traffic authority fails to respond to an application for consent under article 21(1) within 28 days of receiving the application being made, it is deemed to have given its consent. This is to ensure that the undertaker can impose the TROs as quickly as possible in order to control traffic along the specified roads as necessary during construction and operation. As noted above at paragraph 5.7, this is considered necessary to enable the undertaker to exercise its powers in an expedient manner; yet still provides the street authority with a sufficient amount of time to either approve or reject the application. This right was also included in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

## **6. Part 4 – Supplemental Powers**

### ***Article 22 (Discharge of water)***

- 6.1 This article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act. This power is standard across granted DCOs, however, the drafting for this article has been based on article 14 of the Silvertown Tunnel Order, article 15 of the Wrexham Gas Fired Generating Station Order and article 12 of the Triton Knoll Electrical System Order 2016 (S.I. 2016/880).
- 6.2 Article 22 provides that the undertaker can use and connect into (either directly or through additional infrastructure) any existing watercourse, public sewer or drain within the Order Limits for the purposes of the authorised development. Before the undertaker can discharge any water into any watercourse, public sewer or drain, it must first obtain the consent of the owner, who may impose terms and conditions on the discharge. For the avoidance of doubt, this article

does not permit the undertaker to discharge into private drains or sewers.

- 6.3 Article 22(4) has been inserted to confirm that if an owner fails to respond to an application for consent to discharge into its watercourse, sewer or drain within 28 days of receiving that application, that owner will be deemed to have given its consent to the discharge. As noted above at paragraph 5.7, this is considered necessary and appropriate to enable the undertaker to exercise its powers under the Order. Deemed approvals in respect of discharges to water have also been included in other granted DCOs including article 16 of the National Grid (Richborough Connection Project) Order, article 12 of the Triton Knoll Electrical System Order 2016 and article 16 of the North Wales Wind Farms Connection Order 2016.
- 6.4 Article 22(5) departs from these granted DCOs in that it provides an exemption to the prohibition of any works that damage or interfere with the beds or banks of watercourses. Under article 22(5), the undertaker may only damage or interfere with the beds and banks of watercourses if such damage or interference is related to the carrying out of the authorised development. This exemption is necessary to ensure that the undertaker can undertake the necessary works to give effect to article 3 of the Order (Development consent, etc. granted by Order) even where such works may damage or interfere with watercourses (for example, as part of the construction of the authorised development, the undertaker will need to construct headwalls and outfall structures within watercourses). Article 22(5) therefore exempts liability for any offences in respect of watercourses under the Land Drainage Act 1991 and the Water Resources Act 1991 (in respect of watercourses that are main rivers). A similar exemption was included in article 16 of the North London Heat and Power Generating Station Order 2017.
- 6.5 Article 22(9) clarifies that the right to discharge does not remove the requirement to obtain environmental permits in respect of any discharges to water or groundwater. The ability to exempt liability under these statutes is also provided under section 120(5) and paragraph 11 of Schedule 5 of the 2008 Act, which states that a DCO can provide for the imposition or exclusion of obligations or liability in respect of acts or omissions).

### ***Article 23 (Protective work to buildings)***

- 6.6 Article 23 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act. This power is standard across granted DCOs; however, the drafting for this article has been based on article 15 of the Silvertown Tunnel Order 2018, article 17 of the Keuper Underground Gas Storage Facility Order 2017 and article 22 of the Hinkley Point C (Nuclear Generating Station) Order 2013.
- 6.7 It authorises the undertaker to carry out such protective works on any building within the Order Limits prior to, during, or up to five years after its first opening for use, or the carrying out of any part of the authorised development in the vicinity of that building. This power is necessary so that the undertaker can ensure that buildings will not be damaged in the course of constructing the authorised development (for example, damage to building foundations as a

result of vibrations from blasting works or construction traffic).

- 6.8 In order to undertake protective works, articles 23(3) and (4) provide that the undertaker may enter and survey any building in order to determine how best to exercise its powers under this article; and once it has decided, enter the building, land or adjacent land (if necessary) in order to carry out the works. Article 23(3) enables the undertaker, as part of its survey works, to place and leave on any building apparatus and equipment (for example, vibration monitors) that is necessary or expedient for such survey works. Precedent for this drafting is based on the Silvertown Tunnel Order 2018 which also included the ability to "place on, leave on and remove from the land monitoring apparatus", although article 23(3) extends it to include "apparatus and equipment for use in connection with the survey".
- 6.9 Except in an emergency, the undertaker must give no less than 14 days' notice to owners and occupiers of its intention to enter the land or building and carry out protective works under article 23(5). Where a notice has been served under articles 23(5)(a), (c) or (d), the owner or occupier of that land or building may serve a counter-notice under article 23(6) to dispute the need for the undertaker to undertake the protective works or to enter the land or building.
- 6.10 A counter-notice cannot be served in respect of a notice under article 23(5)(b) (notice where the undertaker only intends to enter and survey a building or any land within its curtilage) as this would prevent the undertaker from determining whether or not protective works are necessary, and in any event, is unnecessary as if the undertaker determined such works were necessary, it would then have to serve notice on the owner that it intended to enter the building or land to undertake those works. This restriction is considered appropriate to enable the undertaker to efficiently assess buildings within the Order Limits to determine whether any works are necessary.
- 6.11 This article also makes provision in relation to the payment of compensation both in relation to loss or damage caused by the undertaker carrying out the protective works and where, within a specified period, the protective works are shown not to be sufficient.

#### ***Article 24 (Authority to survey and investigate land)***

- 6.12 Article 24 authorises the undertaker to enter onto any land within the Order Limits or which may be affected by the authorised development to undertake various survey and investigative works (whether or not that land is within the Order Limits), including trial holes. The reason why this power extends beyond the Order Limits is that if there is a claim that there has been an impact from the construction works or from the operation of the authorised development, the undertaker needs the ability to investigate such a claim and not be restricted by the extent of the Order Limits.
- 6.13 Precedent for this article can be found in other granted DCOs, such as in article 20 of the M20 Junction 10a Development Consent Order 2017 and article 17 of the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 (S.I. 2016/73).

- 6.14 Except in an emergency, the undertaker must give not less than 14 days' notice to the owners and occupiers of the land of its intention to exercise its powers under this article. Where notice has been provided, the undertaker (or one of its agents) may enter the land, with such necessary equipment and vehicles, to carry out the survey and investigation or to make trial holes.
- 6.15 If the undertaker proposes to make trial holes within the highway boundary or in a private street, it must obtain the prior consent of the highway or street authority. However, article 24(6) provides that where a street or highway authority fails to respond within 28 days of receiving the application for making trial holes within the highway boundary or in a private street, it is deemed to have given its consent to the works. As noted above in paragraph 5.7, a deemed approval process is appropriate to enable the undertaker to exercise its powers and undertake works in an efficient and expedient manner.
- 6.16 This article also makes provision in relation to the payment of compensation in relation to loss or damage caused by the undertaker carrying out the protective works.
- 6.17 Article 24 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 12 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the carrying out surveys or taking soil samples.

## 7. **Part 5 – Powers Of Acquisition and Possession of Land**

- 7.1 The ability to include powers in a DCO to acquire land, or create, suspend, extinguish, or interfere with interests in or rights over land (whether compulsorily or by agreement) is provided for under sections 120(3) and (4) and paragraphs 1 and 2 of Schedule 5 of the 2008 Act. These provisions provide the justifications for the powers in articles 25, 27, 29, 31 to 34 below. In addition, the Statement of Reasons and the Schedules to the Order explain why certain plots are required and the reasons for the acquisition by reference to specific Work No.s.

### ***Article 25 (Compulsory acquisition of land)***

- 7.2 This article provides the undertaker with the powers to compulsorily acquire any land within the Order Limits where that land is either directly required for construction, operation and maintenance of the authorised development, or is required to facilitate or is incidental to those activities. This power is necessary to ensure that the undertaker can have exclusive possession and control of land that is required for the authorised development.
- 7.3 This article is subject to articles 27 (Compulsory acquisition of rights), 28 (Time limit for exercise of authority to acquire land compulsorily), 32 (Acquisition of land limited to subsoil lying more than 9 metres beneath the surface), 35 (Temporary use of land for carrying out authorised development), and 85 (Crown rights). These articles all impose restrictions on the exercise of powers under article 25.

7.4 Article 25 does not deal with extinguishment and compensation for private rights as these matters are set out in article 29 (Private rights), which outlines how rights in land acquired or temporarily possessed under the Order will be treated. The removal of these matters from article 25 is considered appropriate because there are a number of provisions under Part 5 of the Order which deal with extinguishment of and compensation for private rights so it is easier to have one article that addresses these matters (rather than duplicating across multiple articles). A similar approach has been taken to compensation where third party rights are interfered with in respect of articles 27, 35 and 36.

***Article 26 (Compulsory acquisition of land – incorporation of the mineral code)***

7.5 Article 26 incorporates Parts 2 and 3 of Schedule 2 (Minerals) of the Acquisition of Land Act 1981 to any land acquired by the undertaker that may contain mines or minerals. By incorporating both parts of Schedule 2, this article prohibits the undertaker from also acquiring rights to any mines underneath the acquired land (unless they are expressly purchased), and provides mine owners with the ability to work the mines and extract minerals, subject to certain restrictions. Precedent for this approach is found in other granted DCOs, such as in article 17 of the Wrexham Gas Fired Generating Station Order 2017 and article 19 of the Silvertown Tunnel Order 2018.

7.6 Part 3 of the Acquisition of Land Act 1981 sets out a process relating to the working of any mines or minerals underneath the authorised development. It provides that where an owner seeks to work its mine, it must give notice of its intention to the undertaker who must then decide whether or not the works will damage the authorised development. If the undertaker determines that it will cause damage, article 26 provides it with the power to prohibit the owner from commencing such works, provided that it compensates the owner for its loss.

7.7 The ability to restrict third parties from working mines and minerals below the authorised development is appropriate as such activities have the potential to impact adversely on the authorised development (for example, by undermining ground stability) as well as the undertaker's ability to carry out authorised development pursuant to article 3 (Development consent, etc. granted by Order). Such restriction is also provided for under sections 120(3) and (4) together with paragraph 4 of Schedule 5 of the 2008 Act, which relates to the carrying out specified mining operations within a specified area.

***Article 27 (Compulsory acquisition of rights)***

7.8 This article provides the undertaker with the ability to acquire compulsorily both existing and new rights as well as impose restrictive covenants over land. The rights that the undertaker is seeking to acquire are described in the Book of Reference and shown on the Land Plans (for example, drainage and access rights). Where the undertaker acquires a right over land, it is not required to acquire a greater interest in the land. A similar approach is also taken in article 18 of the Wrexham Gas Fired Generating Station Order 2017.

7.9 Article 27 includes the power to impose restrictive covenants over land so that

the undertaker can avoid having to acquire an interest in land where a restrictive covenant can provide the necessary protections. This is a more proportionate exercise of compulsory acquisition powers and would be exercised, for example, in instances where the undertaker has underground infrastructure (for example telecommunications cables) or where the undertaker carries out above-ground mitigation works that cannot later then be changed or removed by the landowner (such as flood mitigation).

- 7.10 Article 27(2) limits the undertaker's acquisition powers in respect of certain land solely to rights or restrictive covenants for specific purposes. This means that the undertaker is only able to acquire a right in the land listed in Schedule 11 (Land in which rights, etc. may be acquired) and cannot seek to acquire the underlying land itself.
- 7.11 Article 27(3) introduces Schedule 12 (Modifications of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants) that makes modifications to certain compulsory purchase and compensation enactments to allow landowners to claim compensation where the undertaker has created and acquired new rights over, or imposed restrictions on, land. Without this, the compensation provisions would not apply. For the purpose of section 126(2) of the 2008 Act (which allows a DCO to modify the application of compensation provisions), the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and would not affect the amount of compensation which landowners would be entitled to. This provision follows the same approach as in a number of other DCOs including, for example, article 22(4) of, and Schedule 10 to, the National Grid (Hinkley Point C Connection Project) Order 2016.
- 7.12 Articles 27(4) and (5) provide that where the undertaker acquires a right or imposes a restriction over the apparatus of a statutory undertaker, it may, with the consent of the Secretary of State, transfer that right or benefit to the statutory undertaker. An example of this power would be where the undertaker requires the apparatus to be diverted or relocated for the purposes of the authorised development and acquires rights over the new alignment.
- 7.13 The benefit of this power is that it would avoid delays and duplications in both the undertaker and statutory undertakers seeking identical rights over the same apparatus. There is precedent for this approach in articles 18(5) and (6) of the Triton Knoll Electrical System Order 2016 and articles 22(5) and (6) of the National Grid (Hinkley Point C Connection Project) Order 2016.
- 7.14 As noted above in paragraph 7.4 in relation to article 25, article 27 does not deal with the extinguishment and compensation for private rights as these provisions are included in article 29 (private rights). This is also the approach that has been taken in articles 25 (compulsory acquisition of land), 35 (temporary use of land for carrying out authorised development), and 36 (temporary use of land for maintaining authorised development).

## ***Article 28 (Time limit for exercise of authority to acquire land compulsorily)***

7.15 This article provides that the undertaker must exercise its power to acquire land or interests within eight years of the Order being granted. This ensures that landowners within the Order Limits have certainty as to whether or not their land is to be acquired, or rights over their land acquired, within a set period of time. Precedent for this article can be found in other granted DCOs, such as in article 16 of the East Anglia THREE Offshore Wind Farm Order 2017 (S.I. 2017/826), article 23 of the M20 Junction 10a Development Consent Order 2017, and article 20 of the North London Heat and Power Generating Station Order 2017.

7.16 Article 28(2) clarifies that the undertaker may remain on land it has temporarily possessed under article 35 (Temporary use of land for carrying out authorised development) beyond the five-year period in article 28(1) provided it has taken possession of such land prior to the expiry of this period.

## ***Article 29 (Private rights)***

7.17 Article 29 applies to all private rights in land acquired and restrictive covenants imposed over land acquired under the Order. This is the key article within Part 5 of the Order which sets out when third party rights will be extinguished, suspended or discharged as well as setting out the right to compensation for anyone who is affected by an acquisition. This article does not apply to the rights of statutory undertakers which are dealt with separately under article 37 (statutory undertakers) (article 29(5)).

7.18 Article 29 provides that:

7.18.1 Where the undertaker compulsorily acquires land or rights, or imposes a restrictive covenant over land within the Order Limits, all existing private rights and restrictive covenants over that land will be extinguished or discharged, either upon the acquisition or entry by the undertaker to that land (article 29(1)).

7.18.2 Where the undertaker already owns the land within the Order Limits, any private rights or restrictive covenants (not in the undertaker's ownership) over the land will be extinguished or discharged upon appropriation of that land by the undertaker (article 29(2)). This will enable the undertaker to wash the title of this land.

7.18.3 Where the undertaker is temporarily possessing land, any private rights or restrictive covenants over land that is temporarily possessed by the undertaker will be suspended and unenforceable for the duration of the undertaker's possession (article 29(3)).

7.19 Article 29(4) confirms that any person who suffers loss from the extinguishment or suspension of their right or the imposition of a restrictive covenant under this article will be entitled to compensation. The definition of private rights under this article has also been expanded to include a wide range of interests (including but not limited to easements and wayleaves) to make it clear that a range of

different types of interests fall within the scope of this article.

- 7.20 There may be instances, however, where the undertaker may not want or need to extinguish, suspend or discharge rights upon acquisition, entry onto, or temporary possession of the land. In such event, article 29(6)(a) provides that the undertaker must service a notice or reach agreement with the rights holder that it will not affect such rights **prior** to the acquisition, entry or temporary possession of the land. Where such notice has been served or agreement reached, subparagraphs (1), (2) and (3) of article 29 will not apply.
- 7.21 Article 29(9) is a new provision which makes it clear that this article does not apply to any loss suffered under article 14 (Permanent stopping up of streets and extinguishment of private means of access) . This is avoid double recovery of compensation under both articles.
- 7.22 Precedent for this article can be found in article 18 of the East Anglia THREE Offshore Wind Farm Order 2017 (S.I. 2017/826), article 23 of the Brechfa Forest Wind Farm Connection Order 2016 and article 23 of the National Grid (Richborough Connection Project) Development Consent Order 2017 (S.I. 2017/817)

### ***Article 30 (Application of the 1981 Act)***

- 7.23 Article 30 follows the approach in article 26 of the Silvertown Tunnel Order 2018 and article 28 of the M20 Junction 10a Development Consent Order 2017. Article 30 provides for the application of the Compulsory Purchase (Vesting Declarations) Act 1981 ("**the 1981 Act**"), containing the vesting procedures for land subject to compulsory purchase. It allows the undertaker to choose between the notice to treat procedure or the general vesting declaration procedure set out in the 1981 Act. Vesting declarations allow title in land concerned to pass to the acquirer more quickly than using the notice to treat procedure. They also enable several parcels of land to be acquired at the same time and therefore more efficiently than under the notice to treat procedure. This article also clarifies that the undertaker will be a body or person authorised to acquire land for the purposes of the vesting declaration procedure.
- 7.24 In particular, the article modifies specific provisions of the Acquisition of Land Act 1981 so that it is consistent with the eight year timeframe under article 28 of the Order for the exercise of compulsory acquisition powers in relation to the Order Land (compared to the usual timeframe of 3 years for vesting declarations to be executed).
- 7.25 The modification to the Acquisition of Land Act 1981 under article 30 is provided for under section 120(5)(a) of the 2008 Act which allows a DCO to exclude, modify or apply any statutory provision which relates to any matter for which provision may be made in the DCO (in this case, the compulsory acquisition powers under the Order).

### ***Article 31 (Acquisition of subsoil only)***

7.26 Article 31 authorises the undertaker to also acquire the subsoil (as defined in article 2), or rights in it, of any land acquired under article 25 (Compulsory acquisition of land). Precedent for this article can be found in other granted DCOs, such as in article 22 of the Wrexham Gas Fired Generating Station Order 2017 and article 30 of the Hinkley Point C (Nuclear Generating Station) Order 2013. This article is also supported by the definition of "subsoil" in article 2 of the Order.

7.27 Under certain circumstances it may be necessary for the undertaker to only acquire a stratum of land below the surface (for example for the construction of underground services) and therefore article 31 confirms that where any subsoil is required, the undertaker is not required to acquire any greater interest in any other part of the land (i.e. the sub-surface). The purpose of article 31 is to minimise so far as is possible the extent of interests the undertaker needs to acquire, resulting in less impact on landowners and lower compensation payments.

### ***Article 32 (Acquisition of land limited to subsoil lying more than 9 metres beneath the surface)***

7.28 Article 32 authorises the undertaker to acquire the subsoil lying more than 9 metres underground, or such rights as are necessary. Land on which the undertaker is proposing to exercise this power is identified in Schedule 13 (Land of which only subsoil more than 9 metres beneath the surface may be acquired). Precedent for this article can be found in other granted DCOs, such as in article 31 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

7.29 This power is necessary to enable the undertaker to construct underground services and discharge tunnels, or lay cables and pipes necessary for the authorised development on land outside of its ownership. This power avoids the need to obtain an interest in the surface of the land itself, given that works (and the resulting infrastructure) will be located well beneath the surface.

7.30 As for article 31 (Acquisition of subsoil only), article 32 also confirms that where the undertaker obtains an interest in land under this article, it is not required to obtain a greater interest in the land (i.e. in the sub-surface of the land in question). However, article 32(4) disapplies any counter-notices under Schedule 2A of the 1965 Act, Schedule A1 under the 1981 Act or section 153(4A) of the 1990 Act so that article 32 aligns with paragraph 1(2) of these schedules which states that a compulsory purchase order can exclude from these schedules any acquisition of subsoil, or a right in subsoil, that is 9 or more meters below the surface. Section 153(4A) notices in respect of blight have also been disapplied for acquisitions of subsoil 9m or below. This approach has been taken in the Silvertown Tunnel DCO which also included deep tunnelling works.

### ***Article 33 (Modification of Part 1 of the 1965 Act)***

7.31 Article 33 (Modification of Part 1 of the 1965 Act) modifies the provisions of Part 1 of the 1965 Act as applied to the Order by section 125 of the 2008 Act.

7.32 Paragraphs (2) to (5) amend the provisions of the 1965 Act so they are consistent with the terms and timeframes under the Order and the 2008 Act. Paragraph (6) makes it clear that the counter-notice process under Part 2 of Schedule 2A of the 1965 Act, introduced by the HPA, does not apply to the temporary possession or use of land under articles 23, 24, 35, 36 or 42 of this Order. This is because Schedule 2A has two processes for the serving and determination of counter-notices depending on whether or not the acquiring authority is in possession of the land or not. This interpretation clause makes it clear that the undertaker will not be deemed to be in possession of the land where it is exercising its power under articles 23, 24, 35, 36 or 42.

### ***Article 34 (Rights under or over streets)***

7.33 Article 34 provides the undertaker with the right, for the purposes of the authorised development, to occupy the subsoil or airspace of any street within the Order Limits without having to acquire any part of, or right in the street. This exemption does not apply in the case of an underground structure such as a basement or cellar. Where a street is occupied, any person affected is entitled to compensation (or cost-sharing where another statutory undertaker is involved). Precedent for this article can be found in other granted DCOs, such as in article 24 of the Meaford Gas Fired Generating Station Order 2016, article 22 of the Wrexham Gas Fired Generating Station Order 2017, and article 31 of the Keuper Underground Gas Storage Facility Order 2017.

7.34 This right is considered necessary as there may be instances where the undertaker occupies the airspace over a street during construction of the authorised development (for example, where the range of a construction crane extends over the boundary of a works site into an adjacent street).

### ***Article 35 (Temporary use of land for carrying out authorised development)***

7.35 Article 35 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act in that powers to use land temporarily for construction purposes are required to facilitate the construction of the authorised development.

7.36 Article 35 provides the undertaker with the power to enter onto, and temporarily occupy, land for the purposes of carrying out various temporary or permanent works on that land (such as removal of buildings and vegetation), without having to acquire a permanent interest in the land. These works, which are included in Schedule 1 of the Order, are necessary to facilitate the construction of the authorised development and have been assessed as part of the Environmental Statement.

7.37 Before the undertaker can occupy the land, it must provide the landowner and

any occupier with more than three months' notice. Following completion of the works, the undertaker may remain on the land for another one year, unless it has agreed to another timeframe with the landowner or it has acquired an interest in the land which allows it to remain for a longer period (i.e. a right of access). Before it gives up its occupation of the land, the undertaker must either acquire the land, or reinstate the land to the satisfaction of the landowner; except that there is a range of works that the undertaker is not required to undertake as part of its reinstatement obligations.

7.38 In addition to land within the Order Limits, article 35(1)(a)(ii) also allows the undertaker to occupy any other land within the Order Limits (not just that listed in Schedule 14 (Land of which only temporary possession may be taken)), provided that the compulsory acquisition process has not begun in relation to such land (i.e. services of notices). This is to provide some flexibility in being able to use any additional land being identified during the course of construction. A subsequent change is also made to article 35(3)(b) to state how long the undertaker may remain on Order Land following completion of the works.

7.39 The list of works that the undertaker can undertake on any occupied land is set out in articles 35(1) (b) to (d) and includes, removal of buildings and vegetation, removal of electrical lines and plants, structures and apparatus, construction of temporary or permanent works, mitigation works, and works specified in Schedule 14. These works, which are included in Schedule 1 of the Order, are necessary to facilitate the construction of the authorised development and have been assessed as part of the Environmental Statement.

7.40 Article 35(2) provides a three month notice period to align with section 20(3) of the Neighbourhood Planning Act 2017 ("NPA"). This is the only insertion within the Order to address the temporary possession provisions (sections 18 – 31) of the NPA as these are not yet in force, and in the absence of any transitional provisions, it is difficult to identify what other modifications would be needed to align with the NPA.

7.41 Article 35(4) provides that before the end of its possession, the undertaker must decide whether it wants to acquire the land:

7.41.1 If the land is land that has been identified in Schedule 14 (Land of which only temporary possession may be taken), then the undertaker can only compulsorily acquire a right in the land – whether that be an existing right, the creation of a new right, the imposition of a restrictive covenant, or powers of entry (article 35(8)). It cannot acquire the land outright.

7.41.2 If the land is Order Land which has not been subject to a notice to treat or vesting declaration (sub-paragraph (1)(a)(ii)), then the undertaker can either acquire the land or a right in the land under articles 25, 27 or 31.

7.42 Where the undertaker chooses not to acquire the land, it must remove all temporary works and restores the land to the reasonable satisfaction of the

owner (unless other arrangements are agreed to, i.e. where the owner wants to retain boundary fencing along highway areas or hard standing) In undertaking restoration, there are certain works listed in sub-paragraph (4) which the undertaker would not be required to undertake. This includes, but is not limited to, restoring the land where any permanent works have been constructed; remediating the land to a condition better than it was originally (for example, remediating the land to remove existing contamination); and removing any strengthening or statutory apparatus placed on the land during construction.

- 7.43 Article 35 does not deal with extinguishment and compensation for private rights as these provisions are included in article 29 (Private rights). This is also the approach taken in articles 25, 27 (Compulsory acquisition of rights) and 36. It does, however; provide provision for compensation in respect of any loss or damage suffered by any person as a result of the undertaker exercising its rights under this article (see paragraphs (5) and (6)).
- 7.44 Article 35(11) confirms that the undertaker can enter and occupy land multiple times over the course of the construction period.
- 7.45 Article 35(12) has been inserted which confirms that nothing in article 35 removes the need for a marine licence under Part 4 of the Marine and Coastal Access Act 2009. This is necessary because DCOs in Wales do not include a deemed marine licence under section 149A of the 2008 Act and so the undertaker needs to apply for these separately.

***Article 36 (Temporary use of land for maintaining authorised development)***

- 7.46 Article 36 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act in that powers to use land temporarily for maintenance purposes are required to facilitate the maintenance of the authorised development. The undertaker considers this power is more appropriate than seeking to obtain permanent interests in land given the temporary nature of these rights and the potential that the undertaker may not need to access any identified land for many years.
- 7.47 Article 36 provides that the undertaker may enter onto and temporarily occupy any land within the Order Limits that is reasonably required to maintain the authorised development during the occupational period and to construct such temporary works and buildings on the land, without having to acquire a permanent interest. This article does not apply to any house, garden (belonging to a house), any other occupied building or highway land.
- 7.48 "Operational period" is defined in article 2 as the period of time that the relevant part of the authorised development is in operation after construction. This extension is considered appropriate so that it is clear that the undertaker has these powers for the entire duration of the authorised development (anticipated to be 60 years following commissioning). This definition is necessary for the efficiency and safety of the operation of the authorised development which will require maintenance works throughout the course of its lifetime.

7.49 Under this article, the undertaker is entitled to occupy the land for as long as necessary to carry out the relevant maintenance works. The undertaker must give the landowner and any occupier more than three months' notice and on completion of the maintenance works must remove all temporary works and restore the land to the satisfaction of the landowner.

7.50 Article 36(1)(c) includes a right to enter onto any land within the Order Limits for the purpose of gaining access where this is reasonably required to maintain the authorised development. For example, there may be land needed for select maintenance works that is only accessible through other land that would have not been needed for construction purposes. This supplemental provision clarifies that the undertaker can secure appropriate access to those parts of the authorised development which need to be maintained, giving full effect to the maintenance powers granted under paragraph (1)(a).

7.51 The notice period under article 36(3) has also been extended from 28 days to 3 months to align with the forthcoming NPA. (Further discussion on this point has been provided under article 35 above.)

7.52 Article 36(4) has been included which provides an exception to the notification process in paragraph (3) so that the undertaker is not required to serve notice where it has identified that the safety of the authorised development, the public and/or environment is at risk. This will enable the undertaker to undertake maintenance works as quickly as possible in order to safeguard against such risks.

7.53 Article 36(9) has been inserted to confirm that nothing in article 36 removes the need for a marine licence under Part 4 of the Marine and Coastal Access Act 2009. This is necessary because DCOs in Wales do not include a deemed marine licence and so the undertaker needs to apply for these separately.

7.54 Article 36 does not deal with extinguishment and compensation for private rights as these provisions are included in article 29. This is also the approach taken in articles 25, 27 and 35. It does, however, provide for compensation in respect of any loss or damage suffered by any person as a result of the undertaker exercising its rights under this article (see paragraphs (7) and (8)).

### ***Article 37 (Statutory undertakers)***

7.55 Article 37 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 1 of Schedule 5 to the 2008 Act, which states that a DCO can compulsorily acquire land and is also a matter specifically identified in paragraph 14 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the removal, disposal and re-siting of apparatus. The definition of "statutory undertaker" has been extended in this article to include the Nuclear Decommissioning Authority as it is not a statutory undertaker for the purposes of the 2008 Act or the Communications Act 2003.

7.56 Article 37 allows the undertaker to acquire land or rights in land owned by statutory undertakers (such as telecommunications and electricity suppliers) or

to interfere with their apparatus by removing or repositioning the apparatus within the Order Limits.

- 7.57 The general powers in article 37 are subject to Schedule 15 (Protective Provisions) of the Order which sets out controls and processes around the interference, removal, relocation and/or alteration of a statutory undertaker's apparatus.
- 7.58 The scope of the undertaker's powers under sub-paragraphs (1)(b) and (c) include the ability to create and acquire new rights and impose restrictive covenants over the statutory undertaker's land, and extinguish or suspend the rights to alter, renew, or relocate any apparatus (rather than just remove or reposition these). These powers are consistent with the undertaker's ability to acquire existing rights, and create and acquire new rights, and impose restrictive covenants under article 27 (compulsory acquisition of rights) of the Order. This power is not restricted to specific apparatus indicated on a plan or Book of Reference as it is impracticable to show all apparatus and therefore a general power is required. This power makes it unnecessary for the undertaker to rely on the processes in sections 271 and 272 of the TCPA to extinguish these rights.
- 7.59 Sub-paragraph(1)(d) allows the undertaker to construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers or other bodies within the Order limits.
- 7.60 Sub-paragraph (2) has been added to clarify that any apparatus removed or repositioned within a street under article 12 is also subject to Schedule 15.

***Article 38 (Apparatus and rights of statutory undertakers in stopped-up streets)***

- 7.61 Article 38 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 14 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the removal, disposal and re-siting of apparatus. Precedent for this article can be found in other granted DCOs, such as in article 36 of the Hinkley Point C (Nuclear Generating Station) Order 2013, and article 32 of the Silvertown Tunnel Order 2018.
- 7.62 Article 38 protects the powers and rights of any statutory undertaker whose apparatus is located under, in, on, along or across any street which is stopped up under article 14 (Permanent stopping up of streets and extinguishment of private means of access). It also provides that, upon the undertaker's reasonable request, the statutory undertaker must remove or alter the position of existing apparatus or provide other apparatus in substitution.
- 7.63 Where a statutory undertaker relocates, removes or substitutes its apparatus in response to a request from the undertaker, the undertaker must reimburse the statutory undertaker's reasonable costs of doing so (except that the undertaker is not required to reimburse the statutory undertaker where the cost of providing apparatus of a better type, larger dimensions or capacity (unless it agrees to)

or where the works constitute a major highway, bridge or transport work). A definition of "apparatus" has not been included in this article as this is already defined in article 2 of the Order.

### ***Article 39 (Recovery of costs of new connections)***

7.64 Article 39 provides that any owner or occupier of properties that are affected by the removal of any apparatus under article 37 (Statutory undertakers) may recover the costs of any new connections from the undertaker. This article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 14 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the removal, disposal and re-siting of apparatus.

7.65 Article 39(3) clarifies that this article does not apply to apparatus to which article 38 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies as separate compensation provisions are provided under those provisions. Precedent for this article can be found in other granted DCOs, such as in article 35 of the M20 Junction 10a Development Consent Order 2017, article 29 of the North London Heat and Power Generating Station Order 2017, and article 33 of the National Grid (Richborough Connection Project) Development Consent Order 2017.

### ***Article 40 (No double recovery)***

7.66 This article is substantively similar to the approach taken in article 35 of the North London Heat and Power Generating Station Order 2017, article 48 of the National Grid (Hinkley Point C Connection Project) Order 2016, and article 39 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

7.67 This article provides that compensation will not be paid under both the Order and other compensation regimes in respect of the same loss or damage. The principle of equivalence, namely that a claimant in a compulsory purchase matter will be compensated for no more than and no less than his loss, is long established and no part of the compensation code conflicts with this principle. The ability to impose this restriction in a DCO is provided for under section 120(5)(a) of the 2008 Act.

### ***Article 41 (Protective provisions)***

7.68 Article 41 gives effect to the protective provisions in Schedule 15, which protect the interests of third parties (such as gas, water and electricity undertakers) in the construction, operation and maintenance of the authorised development.

7.69 Schedule 15 sets out the procedures that will apply in respect of the removal or retention of apparatus within the Order Limits as well as compensation provisions. Bespoke provisions have been negotiated with a number of statutory undertakers including IACC Highways, Nuclear Decommissioning Agency, National Grid Energy Transmission, Scottish Power Energy Networks, BT Openreach, FibreSpeed Ltd, Network Rail, Magnox, and Dŵr Cymru Welsh Water. No agreement was reached in respect of Network Rail's protective provisions.

7.70 Article 41 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 10 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the protection of the property or interest of any person.

#### ***Article 42 (Rights over land)***

7.71 Article 42 follows the approach taken in article 25 of the North London Heat and Power Generating Station Order 2017 and is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 2 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of new rights over land.

7.72 It allows the undertaker to enter into and use as much of the airspace over any land within the Order Limits as is required for the construction and maintenance of the authorised development or any other ancillary purpose. This right is necessary as landowners also own the airspace above their land and this right would avoid the need to obtain an airspace or over-sailing licence in the event that the undertaker occupies airspace above Order Land that it does not own, or have an interest in (for instance where the arm of a crane extends into the airspace of neighbouring land).

7.73 Article 42(2) clarifies that in exercising its rights under the article, the undertaker will not be required to acquire a greater interest in the land. Under article 42(4), compensation is payable to any persons affected by the undertaker exercising its powers under this article.

### **8. Part 6 - Marine Works**

#### ***Implications of the Wales Act 2017***

8.1 With effect from 1 April 2018, the Wales Act 2017 devolved a number of powers in relation to Welsh Harbours to the Welsh Ministers, including powers to determine harbour empowerment orders ("HEOs") and harbour revision orders under the Harbours Act 1964. In order to facilitate this devolution, section 33 of the Wales Act 2017 amends section 24 of the 2008 Act to remove the construction and alteration of harbour facilities within Wales (except those that form part of a reserved trust port) from the categories of NSIPs for which development consent can be sought under the 2008 Act.

8.2 Although the Wales Act 2017 has amended the 2008 Act to exclude Welsh NSIP harbours, the undertaker is still seeking its own harbour powers within the Order for the following reasons:

8.2.1 The amendment to section 24 of the 2008 by the Wales Act 2017 only applies to harbour facilities in Wales that are an NSIP in their own right; not harbour facilities that form part of another type of NSIP. The undertaker's harbour facilities do not meet the minimum handling thresholds to be considered an NSIP in their own right under section 24 of the 2008 Act but instead form part of an onshore generating station in Wales.

8.2.2 As part of the Order, the undertaker is seeking various harbour powers, including the power to establish a harbour authority, rather than seeking a separate HEO under the Harbours Act 1964. This is because the amendments made by the Wales Act 2017 to the 2008 Act prevents the development from being authorised by an order under the Harbours Act 1964.

8.2.3 In this regard:

- (a) Section 120 of the 2008 Act provides that a DCO can include any provision relating to matters ancillary to the development for which consent is granted (in this case, harbour maintenance and management), including matters set out in Schedule 5.<sup>2</sup> These matters include "the creation of harbour authority" and/or "changing the powers and duties of a harbour authority".<sup>3</sup>
- (b) Section 33(2)(a) of the 2008 Act clearly states that where development consent is required for development, the development *may not* be authorised by "an order under sections 14 or 16 of the Harbours Act 1964".
- (c) Similarly, section 120(9) of the 2008 Act provides that to the extent provision for or relating to any matter *may* be included in a DCO, an order under sections 14 and 16 of the Harbours Act 1964 cannot include any such provision.

#### ***Powers sought within this section***

- 8.3 As noted above, the undertaker cannot apply for a separate HEO under the Harbour Act 1964 for the creation of a harbour authority and so must seek these powers under the Order. The powers sought in this section are based on those granted in the Hinkley Point C (Nuclear Generating Station) Order 2013, the Able Marine Energy Park Development Consent Order 2014 (S.I. 2014/2935) and as well as other harbour-related orders. Reliance on these projects are considered appropriate as they also included construction within the marine coastal area and/or the establishment of a harbour authority to maintain and manage the harbour.
- 8.4 The undertaker has discussed the marine and harbour aspects of the DCO with Trinity House and the Maritime and Coastguard Agency, and they are content with the drafting.

#### ***Article 43 (Incorporation of the 1847 Act)***

- 8.5 Article 43 incorporates specific provisions of the Harbours, Docks and Piers Clauses Act 1847 ("the 1847 Act"). The 1847 Act sets out common form provisions usually contained in legislation authorising the making and improving of harbours, docks and piers and which can be applied to a harbour if they are

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<sup>2</sup> Section 120(3) and (4) of the 2008 Act.

<sup>3</sup> Paragraphs 31 and 32 of Schedule 5 of the 2008 Act.

adopted in the HEO or other order relating to that harbour. For example, the provisions incorporated by article 43 permit the undertaker as the harbour authority to appoint a harbour master who can require vessels to be removed for the purpose of repairing the harbour. It is not mandatory to incorporate the provisions within the 1847 Act but a similar approach was taken in article 53 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

8.6 This article is based on section 120(5) of the 2008 Act which allows a DCO to exclude, modify or apply any statutory provision. The following sections of the 1847 Act have been incorporated because they are needed or are appropriate for the efficient and safe management of the harbour:

- 8.6.1 Section 35 which makes it an offence for masters to fail to report arrival of the vessel within 24 hours after arrival within the limits of the harbour, doc, or pier of any vessel liable to rates, liable to a penalty not exceeding level 1 on the standard scale (currently £200).
- 8.6.2 Section 38 which makes it an offence for master of a vessel to give no account, or a false account, of goods to be unshipped, liable to a penalty not exceeding level 3 on the standard scale (currently £1,000).
- 8.6.3 Section 39 which makes it an offence for shippers to give no account, or a false account, of goods intended to be shipped, liable for to a penalty not exceeding level 3 on the standard scale.
- 8.6.4 Section 53 which makes it an offence for master of a vessel that fail to comply with directions of the harbour master, liable to a penalty not exceeding level 2 on the standard scale (currently £500).
- 8.6.5 Section 54 which makes it an offence for harbour master or his assistants who exercise their powers of authorities without reasonable cause or in an unreasonable or unfair manner, liable to a penalty not exceeding level 1 on the standard scale.
- 8.6.6 Section 55 which makes it an offence for a person to give or offer any sum of money or anything, by way of reward or bribe to any harbour master or any officer employed in or about the harbour, dock, or pier, liable to a penalty of level 2 on the standard scale.
- 8.6.7 Section 61 which makes it an offence for vessels to be improperly moored, liable to a penalty not exceeding level 1 on the standard scale;
- 8.6.8 Section 62 which makes it an offence for a person to wilfully unmoor any vessel within the harbour, liable to a penalty not exceeding level 1 on the standard scale;
- 8.6.9 Section 63 which makes it an offence for vessels to lie or be moored in the entrance of the harbour or dock, or within prescribed limits without the permission of the harbour master, liable to a penalty not exceeding level 1 on the standard scale and a further sum of £1 for every hour that such vessel remains within the limits after a reasonable time for removing

the vessel has expired.

- 8.6.10 Section 64 which gives harbour master the power to remove any vessel for the purposes of repairing, scouring or cleansing the harbour, dock or pier. It makes it an offence for master of a vessel not to remove the vessel within three days after notice in writing from the harbour master, liable to a penalty not exceeding level 1 on the standard scale.
- 8.6.11 Section 66 which makes it an offence for masters of discharged vessels not to follow directions from the harbour master requiring that they vacate the harbour or docks and piers within the harbour, liable to a penalty not exceeding level 1 on the standard scale;
- 8.6.12 Section 68 which allows the harbour master to remove cargoes from the piers or quays of the harbour that have remained longer than the byelaws allow and the harbour master may sell the goods to pay the expenses of removal and keeping of the goods from the sale proceeds, if such expenses are not paid to the undertakers within seven days after the demand is made to the owner;
- 8.6.13 Section 69 which gives the harbour master the power to fine any person who has control of combustibles which remain in a place within the harbour after the responsible person has been notified to remove the combustibles; and
- 8.6.14 Section 70 which makes the owner of a vessel responsible for providing (at its own expense) a sufficient number of persons to guard the vessel if the vessel contains any combustible things that will remain within the harbour or doc, or at or near the pier after sunset.
- 8.6.15 Section 73 which makes it an offence for a person to throw or put any ballast, earth, ashes, stones or other thing into the harbour or dock, liable to a penalty not exceeding level 1 on the standard scale.
- 8.6.16 Section 74 which makes the owner of a vessel or float of timber answerable to the undertakers for any damage done by such vessel or float of timber, or by any person employed about the same, to the harbour, dock, or pier, or quays or any works connected.
- 8.6.17 Section 75 which allows the amount claimed for damages in respect of section 74 to be recovered before two justices if it does not exceed fifty pounds and gives power to the justices to distrain, keep or sell any part of the property if the amount of damages and costs are not paid within seven days after the distress or keeping.

8.6.18 Sections 83 and 84 which give the undertaker the power to make, repeal, alter and enforce byelaws. These powers are needed as the 1847 Act allows for a wider range of byelaws to be made than article 60 of the Order (byelaws).

8.7 The following operative sections of the 1847 Act have not been incorporated because they are not substantive provisions, because they are provided for or required to be excluded by other legislation or because they have no relevance to the Wylfa Newydd DCO Project. As a result, the non-incorporation of these provisions will not have a practical effect on the carrying out of the Marine Works or the operation of the harbour:

- 8.7.1 Sections 3A, 6 -11, 26, 50, 92, 77, 78, 92 and 101 do not apply to harbours within Wales and therefore have not been included;
- 8.7.2 Section 12 -13, 20-23, 60, 67, 79, 80, 85, 97 and 98 are not relevant to the Wylfa Newydd DCO Project;
- 8.7.3 Section 4 relates to the citing of the Act and is not operative;
- 8.7.4 Sections 5, 24, 30, 47, 89, 91, 93 to 96 and 104 have since been repealed and are therefore not relevant;
- 8.7.5 Sections 14 -19, 25, 27-34, 36, 40-46, , 48, 49, 81 and 82 relate to the calculation, charging and enforcement of rates by an undertaker on vessels and members of the public. As the undertaker will not be collecting rates, these sections are irrelevant.
- 8.7.6 Section 59 relates to the dismantling of sailing vessels. As the harbour will not be open to the public or used by sailing vessels, this section is irrelevant;
- 8.7.7 Section 71 makes it an offence to heat flammable objects, or carry loaded weapons or gunpowder within the harbour without the consent of the undertaker. This section is not appropriate as section 120(8) of the 2008 Act precludes DCOs from creating this kind of offence;
- 8.7.8 Sections 72 (Power to enter a vessel to extinguish a fire), 77 (Power to lay down buoys), 99 (Protection of Crown interests) and 102 (Protection Trinity House interests) are not included as these powers are already provided for under this Order or other legislation (such as the Merchant Shipping Act 1995); and
- 8.7.9 Section 99 which makes it an offence for the undertaker not to keep a copy of the Order has not been included as this Order will be publicly available.

8.8 Articles 43(2)-(6) provides for certain provisions and definitions contained in the 1847 Act as they are to be incorporated in the DCO to be construed in a particular way. The practical effect of this construction is to ensure that those definitions from the 1847 Act are appropriately applicable to the DCO and the

powers and rights conferred under it.

8.9 The 1847 Act provides for certain fines and forfeitures to be recoverable, and article 43(7) provides that to the extent that those provisions are included in the DCO, the relevant fines and forfeitures may be recovered summarily. This article reflects the approach taken in article 53(4) of the Hinkley Point C (Nuclear Generating Station) Order 2013.

#### ***Article 44 (Further powers as to works and extinguishment of rights)***

8.10 Article 44 authorises the undertaker to enclose or reclaim areas of foreshore and seabed and hold and use them, within the limits of deviation, for the construction of the Marine Works. This power is necessary to facilitate the construction of the Marine Works themselves, as well as providing laydown areas.

8.11 When the undertaker exercises this power, article 44(2) provides that any right of navigation or other public rights over that part of the sea and foreshore will be extinguished. The power to extinguish such rights is necessary to control navigation around the Marine Works for safety and security.

8.12 Sections 120(3) and (4) and paragraph 2 (creation, suspension, extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement) of Schedule 5 of the 2008 Act allow this power to be included in this Order.<sup>4</sup>

8.13 This article reflects the approach taken in article 56 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Precedent for this article can be found in other DCOs, such as article 35 of the Walney Extension Offshore Wind Farm Order 2014 (S.I. 2014/2950) and article 7 of the Burbo Bank Extension Offshore Wind Farm Order 2014 (S.I. 2014/2594).

#### ***Article 45 (Harbour authority)***

8.14 Article 45 establishes the undertaker as the harbour authority for the purposes of the Harbours Act 1964. This article is necessary to constitute the undertaker as the harbour authority within the harbour limits set out in article 48 (Limits of harbour) and Schedule 16 (Limits of Harbour).

8.15 As a harbour authority the undertaker has a statutory duty to manage, maintain and improve the harbour. Sections 120(3) and (4), together with paragraph 31

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<sup>4</sup> In relation to public rights of navigation, the Burbo Bank ExM states that: "*Unlike the Transport and Works Act, the 2008 Act does not on its face authorise the interference with rights of navigation [...].*"

However, section 120 of the 2008 Act states: "(3) An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted. (4) The provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5". Paragraph 2 of Schedule 5 states: "The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement." The Explanatory Notes to the 2008 Act also state that the ancillary matters listed in Schedule 5 are non-exhaustive.

of Schedule 5 of the 2008 Act, allow for provisions relating to the creation of a harbour authority to be contained within a DCO.

- 8.16 A harbour authority is necessary for the efficient management and maintenance of the harbour. In its capacity as the harbour authority the undertaker will be able to incorporate byelaws through articles 43 (Incorporation of the 1874 Act) and 61 (Byelaws) to protect the integrity of the harbour and the Marine Works within it.
- 8.17 Article 45 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 31 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of a harbour authority. It is also authorised under section 145 of the 2008 Act.

#### ***Article 46 (Agreements entered into by the undertaker)***

- 8.18 Article 46 provides for agreements or undertakings entered into by the undertaker, in connection with the proposed exercise of its functions as harbour authority, prior to its constitution, to be valid and binding. This article is needed to give full effect to article 58 (Permanent lights on Marine Works), and as such can be included in this Order under section 120(5)(c) of the 2008 Act. This article reflects the wording in article 9 of the London Gateway Port Empowerment Order 2008.

#### ***Article 47 (Application of Pilotage Act 1987)***

- 8.19 Article 47 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is also necessary or expedient to give effect to other provisions in the order within section 120(5)(c) as it is necessary to define the extent of the undertaker's powers as harbour authority under the Order.
- 8.20 This article establishes the undertaker as a competent harbour authority for the purposes of the Pilotage Act 1987. Competent harbour authority status will enable the undertaker to provide pilotage services within the harbour limits to ensure safety of the harbour in accordance with the Pilotage Act 1987. Precedent for this article can be found in pilotage powers orders, for example in article 2 of the Yorkshire Ouse (Pilotage Powers) Order 1998 (S.I. 1998/1272) and article 2 of the Argyll and Bute Council (Pilotage Powers) Order 2007 (Scottish S.I. 2007/3).

#### ***Article 48 (Limits of harbour)***

- 8.21 Article 48 follows the approach taken in article 58 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Article 48 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is also necessary or expedient to give effect to other provisions in the order within section 120(5)(c) as it is necessary to define the extent of the undertaker's powers as harbour authority under the Order.

8.22 Article 48 and Schedule 16 together set out the harbour limits that the undertaker is entitled to exercise its powers within:

8.22.1 The seaward limits (below the level of mean high water) are described in Schedule 16 and, for identification purposes, edged by a red line referred to as the Statutory Authority Area on WN0902-HZDCO-MRN-DRG-00034.

8.22.2 The landward limits which consist of the land within the limits of deviation of Works Nos. 1E to H (shown on the Works Plans) which is above the level of mean high water.

8.22.3 The harbour limits are more extensive than the Order Limits, as this is necessary to ensure the efficient and safe navigation of the harbour.

8.23 Vessels approaching the harbour will need to be directed and in some cases piloted into the harbour. This is because the harbour will be man-made and vessel masters will not have an understanding of the intricacies of navigating it. In addition, as the majority of vessels will find manoeuvring within the harbour difficult (as a result of their size, and the unfamiliarity of vessel masters with the harbour). Therefore, the vessels will need to be given, and comply with, directions well before they reach the Order Limits, and in some cases will need to be piloted into the harbour through the use of compulsory pilotage powers, which the undertaker is authorised to exercise through article 47 (Application of Pilotage Act 1987).

8.24 An express provision that the description of the seaward harbour limits prevails over the area shown on WN0902-HZDCO-MRN-DRG-00034 has been included to avoid any doubt in the event of inconsistency.

#### ***Article 49 (Application of Marine and Coastal Access Act 2009)***

8.25 *[This article replaces the earlier version of article 49 which related to maintenance of Marine Works]*

8.26 This article has been included for the avoidance of doubt and confirms that nothing in Part 6 removes the need for a separate marine licence. This confirms the position under section 149A of the 2008 Act that no deemed marine licence can be included in a Welsh DCO.

8.27 The article also clarifies that in the event of any inconsistency between the Marine Requirements under the Order and the terms of the Marine Licence, the terms in the Marine Licence will prevail and that nothing in this Order will affect the enforcement provisions in respect of a Marine Licence under the Marine and Coastal Access Act 2009..

#### ***Article 50 (Obstruction of work)***

8.28 Article 50 is based on article 61 of the Hinkley Point C (Nuclear Generation Station) Order 2013 and article 15 of the London Gateway Port Harbour

Empowerment Order 2008. Article 50 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 32B of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of offences in connection with various matters.

8.29 This article provides that any person who intentionally obstructs the undertaker (or someone authorised by the undertaker) while it is constructing the authorised development (which includes the Marine Works), or without reasonable excuse interferes with, moves or removes any equipment used in the construction, maintenance or use of the authorised development will be guilty of an offence and liable on summary conviction to a fine. This provision is needed to ensure that the construction of the authorised development is not obstructed, ensuring construction stays on schedule.

#### ***Article 51 (Obstruction of officers)***

8.30 Article 51 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is also necessary or expedient to give effect to other provisions in the order within section 120(5)(c) as it relates to the operation of the authorised development. The article creates an offence that falls under the exception set out in section 120(8) of the Act because it relates to offences created under paragraph 32B of Schedule 5 of the Act.

8.31 Article 51 provides that any person who intentionally obstructs a person authorised by the undertaker in connection with the exercise of this Order, unreasonably fails to comply with a requirement properly made by the authorised person, or fails to give the authorised person any information or document that they need to perform their function will be guilty of an offence and liable on summary conviction to a fine.

8.32 Precedent for this article can be found in article 48 of the London Gateway Port Harbour Empowerment Order 2008.

#### ***Article 52 (Power to dredge)***

8.33 Article 52 gives the undertaker the right to dredge within the harbour limits for the purpose of constructing, maintaining and operating the Marine Works. These powers are subject to the requirements set out under the Marine and Coastal Access Act 2009 ("2009 Act"). The undertaker is applying for a marine licence from NRW in relation to both the construction of the Marine Works and the dredging of the harbour and disposal of the dredged material at Holyhead North.

8.34 Article 52 is similar to article 62 of the Hinkley Point C (Nuclear Generating Station) Order 2013, except that it has been modified to apply to the Wylfa Newydd DCO Project. Article 52 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it relates to the construction and maintenance of the authorised development.

#### ***Article 53 (Abatement of works abandoned or decayed)***

- 8.35 Article 53 gives the Welsh Ministers the power to require the undertaker to repair and restore, or to remove and restore, the site of any Marine Work which is abandoned or has fallen into decay. Such a requirement can extend to a work which is partly above and partly below mean high water springs. In default the Welsh Ministers can undertake the work and recover the costs from the undertaker.
- 8.36 Article 53 is identical to article 18 of the Swansea Bay Tidal Generating Station Order 2015 and is provided for under section 120(3) of the 2008 Act.

#### ***Article 54 (Survey of Marine Works)***

- 8.37 Article 54 takes account of the devolution of powers to the Welsh Ministers and makes provision for surveys and examinations of the Marine Works, or of prospective sites for the Marine Works to be carried out, by the Welsh Ministers. Any expenditure on such surveys and examinations will be recoverable from the undertaker. This article is identical article 19 of the Swansea Bay Tidal Generating Station Order 2015, except it has been modified to refer to the relevant authorities.
- 8.38 This article is provided for under section 120(3) of the 2008 Act

#### ***Article 55 (Lights on Marine Works etc. during construction)***

- 8.39 Article 56 takes into account of the devolution of powers to the Welsh Ministers and Trinity House's role as General Lighthouse Authority. This article requires the undertaker to comply with directions given by Trinity House and/or the Welsh Ministers to display lights for the prevention of danger to navigation during the construction period of any Marine Works. Precedent for this article can be found in article 20 of the Swansea Bay Tidal Generating Station Order 2015.
- 8.40 This article is provided for under section 120(3) of the 2008 Act.

#### ***Article 56 (Provision against danger to navigation)***

- 8.41 Article 56 requires the undertaker to notify Trinity House if there is any damage, destruction or decay to a Marine Work and to lay down buoys and lights or take such other steps to prevent danger to navigation as Trinity House may direct. Precedent for this article can be found in other granted DCOs, such as in article 27 of the Able Marine Energy Park Development Consent Order 2014 and schedule 9, clause 18 of the Walney Extension Offshore Wind Farm Order

2014.

#### ***Article 57 (Permanent lights on Marine Works)***

8.42 Article 57 requires the undertaker to comply with directions given by Trinity House to display lights for the prevention of danger to navigation after the completion of the Marine Works. Precedent for this article can be found in other granted DCOs, such as in article 28 of the Able Marine Energy Park Development Consent Order 2014 and article 28 of the Swansea Bay Tidal Generating Station Order 2015. This article is provided for under section 120(3) of the 2008 Act.

#### ***Article 58 (Safety of navigation)***

8.43 Article 58 prevents any Marine Works from being commenced until a scheme to secure the safety of navigation has been submitted to, and approved by, the Welsh Ministers (in consultation with Trinity House and Maritime and Coastguard Agency). This article reflects the wording requested by Trinity House. Precedent for this article can be found in article 23 of the Swansea Bay Tidal Generating Station Order 2015.

8.44 This article differs from the precedent in that it includes only a few of those matters identified in article 23(2) of the Swansea Bay Tidal Generating Station Order 2015 which are relevant to the Wylfa Newydd DCO Project. This article is provided for under section 120(3) of the 2008 Act.

#### ***Article 59 (Rights to lease etc.)***

8.45 Article 59 gives the undertaker the power to lease or grant rights or interests over land forming part of the harbour. Such a lease may include provisions delegating to the lessee or grantee powers and/or duties under this Order except for specified key functions including powers relating to byelaws, the appointment of a harbour master and the lighting and marking of the harbour.

8.46 This article follows the approach taken in article 68 of the Hinkley Point C (Nuclear Generating Station) Order 2013 and is provided for under section 120(3) of the 2008 Act.

#### ***Article 60 (Byelaws)***

8.47 Article 60 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 32A of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of byelaws.

8.48 Article 60 enables the undertaker to make byelaws for the efficient management, regulation and construction of the authorised development and the efficient management and regulation of the harbour. It also sets out the matters for which byelaws may be enacted. Enactment of the byelaws is subject to confirmation by the Welsh Ministers. These include the regulation and movement of vessels, unloading of goods, conduct of persons within the

harbour and prevention of damage or injury to goods, vehicles, plant, machinery, property or persons.

- 8.49 Under article 60(3), the byelaws may include provisions making breach of the byelaws a summary offence punishable with a fine not exceeding level 3 on the standard scale (currently £1,000).
- 8.50 The procedure for making and confirming byelaws is modelled on that used for local authority byelaws under section 236 of the Local Government Act 1972. This provision is also based on article 69 of the Hinkley Point C (Nuclear Generating Station) Order 2013 and article 4 of the London Gateway Port Harbour Empowerment Order 2008, except that it has been modified to provide for additional matters for which byelaws may be enacted and outlines specific requirements in relation to the content and publication of any notice under this article.

#### ***Article 61 (General directions to vessels)***

- 8.51 Article 61 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it relates to the construction and operation of the authorised development.
- 8.52 This article gives the undertaker the power, as a harbour authority, to make, revoke and amend general directions for regulating vessel movements. must consult the Chamber of Shipping and the Royal Yachting Association before making, revoking or amending general directions. The power to make such directions is necessary for the control of navigation around the Marine Works and to ensure their safety and security and is provided for under section 120(3) of the 2008 Act.
- 8.53 In the event of a breach of a general direction, the harbour master would be able to use article 65 (failure to comply with directions) in order to fine the offending vessel master. In addition, harbour master could issue a special direction requiring compliance with the general direction. In default, the remedy under article 66 (enforcement of special directions) would be available. Non-compliance would also entail civil liability.
- 8.54 This article follows article 71 of the Hinkley Point C (Nuclear Generating Station) Order 2013, except that it has been modified to include an additional matter in article 62(2) and limit consultation to the Chamber of Shipping and the Royal Yachting Association. Other granted DCOs, including article 16 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 (Scottish S.I. 2016/156) and article 18 of the Aberdeen Harbour Revision Order 2016 (Scottish S.I. 2016/414) also follow a similar approach to the one taken in article 62.

#### ***Article 62 (Publication of general directions)***

- 8.55 Article 62 provides that, except in an emergency, notice of general directions must be published in a newspaper specialising in shipping news and the directions must be available for public inspection and sale. In an emergency,

notice of the directions may be given in any manner the undertaker considers appropriate. Article 62 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3).

8.56 This article is identical to article 72 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Precedent for this approach can also be found in article 17 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 and article 6 of the Newhaven Harbour Revision Order 2016 (S.I. 2016/151).

#### ***Article 63 (Special directions to vessels)***

8.57 Article 63 enables the harbour master to give specific directions to specific vessels for specific movements. These differ from general directions which are requirements of general application and so capable of being published in advance. It is usual in modern HEO to include provisions setting out powers to make special directions in updated form rather than relying on the incorporation of section 52 of the 1847 Act. This makes the provisions more accessible both for the harbour master and to harbour users.

8.58 Special directions are enforceable under article 66 (enforcement of special directions). This provision is included in article 73 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Precedent for this article can be found in article 18 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 and article 7 of the Newhaven Harbour Revision Order 2016.

8.59 Article 63 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3).

#### ***Article 64 (Master's responsibility to be unaffected)***

8.60 Article 64 provides that the responsibility of the master of a vessel is not affected by the giving of a direction. This article is identical to article 74 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Precedent for this article can also be found in article 21 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 and article 10 of the Newhaven Harbour Revision Order 2016.

8.61 Article 64 is a provision relating to, or to matters ancillary to, the authorised development within section 120(5)(c), which enables provisions necessary or expedient for giving effect to any other provision to be included in a DCO.

#### ***Article 65 (Failure to comply with directions)***

8.62 Article 65 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 32B of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of offences.

8.63 This article provides that a vessel master who fails without reasonable excuse to comply with a general or special direction will be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard

scale. The right to charge under this article is provided for under sections 120(3) and (4) together with paragraph 18 of Part 1 of Schedule 5 of the 2008 Act, which allow for the provisions in relation to charging penalty fares to be included in a DCO.

8.64 This article is similar to article 75 of the Hinkley Point C (Nuclear Generating Station) Order 2013, except that the fine level has been lowered to Level 3 to align with more recent orders such as Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 and article 8 of the Newhaven Harbour Revision Order 2016.

#### ***Article 66 (Enforcement of special directions)***

8.65 Article 66 enables the undertaker to enforce a special direction which, if not complied with within a reasonable time by putting persons on board the vessel to carry out the direction, or may otherwise cause the vessel to be handled in accordance with the directions. Expenses incurred in enforcing a special direction can be recovered by the undertaker from the owner of the vessel. This article is an updated version of section 58 of the 1847 Act.

8.66 This article is identical to article 76 of the Hinkley Point C (Nuclear Generating Station) Order 2013. Precedent for this article can also be found in article 20 of the Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016 and article 9 of the Newhaven Harbour Revision Order 2016. The powers under this article have been included pursuant to section 120(5)(c) of the 2008 Act, which enables provisions necessary or expedient for giving effect to any other provision to be included in a DCO.

#### ***Article 67 (Boarding of vessels)***

8.67 Article 67 allows any officer duly authorised by the undertaker to inspect a vessel within the harbour limits, for the purpose of any legislation or byelaw relating to the undertaker as harbour authority under this Order, or to prevent or extinguish fire. This power cannot be utilised unless the vessel owner has received notice of the boarding, unless there is an emergency. This article is identical to article 11 of the Comhairle nan Eilean Siar (Various Harbours) Harbour Revision Order 2002 (Scottish S.I. 2002/410).

8.68 The powers under this article have been included pursuant to section 120(5)(c) of the Act.

#### ***Article 68 (Charges)***

8.69 Article 68 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 18 of Schedule 5 to the 2008 Act, which states that a DCO can include provisions relating to charges.

8.70 This article enables the undertaker to charge for services performed by the undertaker in the exercise and performance of its statutory duties as harbour authority. This article is identical to article 77 of the Hinkley Point C (Nuclear

Generating Station) Order 2013. In addition, it is usual for harbour authorities to be empowered to make charges for services provided by them in that capacity. Precedent can also be found in article 28 of the Port of Ardresier Harbour Revision Order 2014 and is provided for under sections 120(3) and (4) together with item 18 of Schedule 5 of the 2008 Act, which allow a DCO to include provisions relating to charges.

#### ***Article 69 (Use of the Marine Off-loading Facility)***

- 8.71 This article provides that the MOLF can only be used for the purposes of, or in connection with, the construction, operation, maintenance and decommissioning of nuclear energy related facilities at Wylfa Newydd. This provision was included in Hinkley Point C (Nuclear Generation Station) Order 2013 following a request by the Ministry of Defence in relation to the temporary jetty, and so the undertaker has also precluded the use of the MOLF for recreational or general commercial purposes.
- 8.72 The powers under this article have been included pursuant to section 120(5)(c) of the 2008 Act.

#### ***Article 70 (Saving for Trinity House)***

- 8.73 Article 70 provides that the rights and duties or privileges of Trinity House, the General Lighthouse Authority, are unaffected by this Order. This article is identical to article 39 of the Triton Knoll Electrical System Order 2016 and article 36 of the East Anglia THREE Offshore Wind Farm Order 2017.

### **9. Part 7 - Miscellaneous And General**

#### ***Article 71 (Removal of human remains)***

- 9.1 Article 71 a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it relates to the construction of the authorised development and is provided for under section 120(5)(a) of the 2008 Act. Precedent for this article can be found in other granted DCOs, such as in article 14 of the Triton Knoll Electrical System Order 2016 and article 20 of the River Humber Gas Pipeline Replacement Order 2016.
- 9.2 It requires the undertaker, before it carries out any works which will or may disturb any discovered human remains in the specified land, to remove those remains in accordance with the procedure set out in the article (effectively replacing the licence regime under the Burial Act 1857). This procedure sets out various notification requirements and the process for removing and interring the remains either at the request of a relative or personal representative of the deceased person, or by the undertaker. This article includes the provisions as to the identification of human remains, processes for their re-interment, and the requirement for the undertaker to pay reasonable expenses of removing and re-interring or cremating any remains so discovered.
- 9.3 Although substantial archaeological investigations have been undertaken within the WNDA, the purpose of this article is to provide an appropriate procedure to

be followed in the event unexpected human remains are found anywhere within the Order Limits. This is important because of the effect of section 25 of the Burials Act 1857.

- 9.4 Section 25 of the Burials Act 1857 makes it an offence for a body or any human remains that have been interred in a place of burial to be removed unless (a) a Court grants a 'faculty', (b) the body or remains are removed in accordance with the approval of the Care of Cathedrals Measure (No.1), or (c) the body or remains are removed under a licence of the Secretary of State. This latter licensing function is administered by the Ministry of Justice.
- 9.5 Article 71(14) disapplies section 25 of the 1857 Act, but replaces it with the procedure set out in the article.
- 9.6 The procedure set out in article 71, provides a more streamlined and efficient process for dealing with unexpected human remains than that set out in the 1857 Act and is appropriately applied in this case so that the undertaker can deliver the Wylfa Newydd DCO Project in an efficient manner and the intention of the 2008 Act is not undermined..

#### ***Article 72 (Application of landlord and tenant law)***

- 9.7 Article 72 overrides any statutory provisions relating to landlord and tenant law in so far as they may prejudice the operation of any agreement for leasing the whole or part of the authorised development or any agreement for the construction, maintenance, use or operation of the authorised development or any part of it entered into by the undertaker. The purpose of this article is to safeguard any agreement entered into by the undertaker pursuant to its rights under article 9(1)(b) (consent to transfer the benefit of Order) so that no other enactment or rule of law may modify or frustrate the rights and obligations of the parties under any such lease or agreement. Precedent for the article can be found in other granted DCOs, such as in article 32 of the Wrexham Gas Fired Generating Station Order 2017 and article 30 of the Meaford Gas Fired Generating Station Order 2016.
- 9.8 Powers under this article are provided for under section 120(5)(a) of the 2008 Act which enables the exclusion of any statutory provisions which relate to any matter provided for under a DCO.

#### ***Article 73 (Operational land for purposes of the 1990 Act)***

- 9.9 Article 73 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) as it relates to the operation of the authorised development. Precedent for this article can be found in other granted DCOs, such as in article 51 of the Silvertown Tunnel Order 2018, article 33 of the Wrexham Gas Fired Generating Station Order 2017 and article 31 of the Meaford Gas Fired Generating Station Order 2016.
- 9.10 This article provides that for the purposes of section 264(3)(a) of the 1990 Act (cases in which the land is to be treated as operational land for the purposes of that Act), development consent granted by the Order is to be treated as a

specific planning permission and therefore the land within the Order Limits treated as "operational land".

9.11 The purpose of this is to ensure that permitted development rights under Part 17 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 ("GDPO") (S.I. 1995/418), which remains the Order granting permitted development rights in Wales, applies in relation to the Order Land, as these rights do not apply to non-operational land held by a statutory undertaker. This will ensure that the undertaker can undertake permitted development as of right without the need for further consents. It is intended that permitted development rights Class B (harbour undertaking) and Class G (electricity undertakers) under Part B of the GDPO will also apply to the Order Land.

***Article 74 (Felling or lopping of trees and removal of hedgerows)***

9.12 Article 74 follows the approach taken in article 15 of the Brechfa Forest West Wind Farm Order 2013 and article 31 of the North Wales Wind Farms Connection Order 2016 (S.I. 2016/818).

9.13 Article 74 enables the undertaker to fell or lop trees and shrubs near any part of the authorised development for the purposes of preventing the obstruction or interference with the construction, maintenance or operation, or danger to any users of the authorised development. Provision is included for the payment of compensation for any loss and damage caused and its determination in the event of a dispute.

9.14 Article 74(3) provides that the undertaker may, for the purposes of the authorised development, remove any hedgerow within the Order Limits, or any sections of "important hedgerows" identified in Schedule 17 (Removal of hedgerows) of this Order. Paragraph (4) clarifies that, where an undertaker seeks to exercise powers under paragraph (3), it will not be required to obtain consent under the Hedgerows Regulations 1997 (S.I. 1997/1160). This power is necessary to enable the undertaker to remove any hedgerows or identified important hedgerows that are obstructing or interfering with the construction, operation, maintenance, or the safety of users, of the authorised development (for example, where the hedgerow blocks sightlines from access points within the authorised development). All sections of important hedgerows that are proposed to be removed are shown on the Important Hedgerow removal plans identified in Schedule 17.

9.15 Article 74(5) makes it clear that nothing in this article authorises works to any tree subject to a tree preservation order ("TPO"). Although no trees that are subject to TPOs have been identified within the Order Limits, this provision has been included in the event that one may be identified in future.

9.16 Article 74(7) incorporates the definitions of "hedgerow" and "important hedgerow" from the Hedgerows Regulations 1997.

9.17 As there are a number of hedgerows and important hedgerows within the WNDA, the powers under this article are necessary to undertake construction

of the authorised development and are provided for under sections 120(3) and (4) together with paragraph 13 of Schedule 5 of the 2008 Act. In addition, the power to disapply the consent requirements under the Hedgerow Regulations is also provided for under section 120(5)(a) of the 2008 Act.

#### ***Article 75 (Service of notices)***

9.18 Article 75 follows the approach taken in article 44 of the Hinkley Point C (Nuclear Generating Station) Order 2013. It sets out the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served. In particular, it requires all notices to be in Welsh and English, allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. This article is necessary as the service of notice provisions under sections 229 and 230 of the 2008 Act would not apply to notices served under a DCO.

#### ***Article 76 (Certification of plans, etc.)***

9.19 Article 76 requires the undertaker to submit copies of specific plans and documents to the Secretary of State to be certified as true copies following the making of the Order. Schedule 18 (Certified Documents) sets out the list of documents and plans that are required to be certified by the Secretary of State under the article 76. This article provides that any plans and documents that are certified under this article can be used as evidence in any proceedings.

9.20 Precedent for the use of this model provision can be found in other granted DCOs, such as in article 35 of the Wrexham Gas Fired Generating Station Order 2017, and article 44 of the M20 Junction 10a Development Consent Order 2017.

#### ***Article 77 (Arbitration)***

9.21 Article 77 makes provision for differences and disputes arising under any provision of the Order, unless otherwise agreed between the parties, to be determined by arbitration. It enables agreement to be reached between the parties, rather than being as to the arbitrator or failing agreement it provided for the arbitrator to be appointed by the Secretary of State. The Secretary of State is considered to be the appropriate body given that any disputes will relate to a DCO. This arbitration provision does not apply to any of the marine provisions from the 1847 Act that are incorporated into the Order under article 43 or to Trinity House in its exercise of its statutory functions or as per article 70.

9.22 Precedent for this article can be found in other large infrastructure DCOs, such as the article 34 of the North London Heat and Power Generating Station Order 2017, article 63 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, article 32 of the Glyn Rhonwy Pumped Storage Generating Station Order 2017, and article 45 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

### ***Article 78 (Procedure in relation to certain approvals etc.)***

9.23 Article 78 gives effect to Schedule 19 (Procedure for approvals, consents and appeals) to the Order which sets out the procedure to be followed in relation to applications made to a discharging authority for any agreement or approval required by a Requirement in the Order. Similar approaches to setting out the procedure for the discharge of requirements in a separate schedule have been taken in article 47 of the River Humber Gas Pipeline Replacement Order 2016 (S.I. 2016/853), article 39 of the North Wales Wind Farms Connection Order 2016 and article 46 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

9.24 This article differs from the precedent approaches as paragraph (1) does not apply to consents, agreements or approvals required under the articles 11, 12, 16, 18, 21, 22, and 24 of the Order ("**Order articles**")<sup>5</sup> or certain requirements relating to approval of samples where detailed designs have been approved in Schedule 2 of the Order, as the approval procedures under these articles are set out in the respective Order article. For example, under article 16, the undertaker is required to obtain the consent of the street authority prior to temporarily stopping up a street. Article 16(7) then provides that the street authority has a specified timeframe to make its decision, otherwise it is deemed to have granted consent to the stopping up. As noted at paragraph 5.7, this approach to obtaining consents is considered appropriate.

9.25 While the approval procedure in Schedule 19 does not apply to the Order articles, sub-paragraph (2) clarifies that the appeal process in sub-paragraph 4 of Schedule 19 will also apply to Order articles, not just the Requirements. This is to make it clear that the undertaker has the benefit of the appeal process in Schedule 19 for all approvals required under the Order. This is appropriate as it removes any duplication within the Order itself, and provides for the appeal process to apply consistently across all approvals and consents, regardless of whether they are required under the articles or the Requirements.

9.26 The appeal process set out in Schedule 19 is based on the procedure contained within Schedule 14 to the Hinkley Point C (Nuclear Generating Station) Order 2013 given that this was also a large nuclear power station and so included similar approval requirements. The appeal process under Schedule 19 provides that an appeal can be made to the Secretary of State to discharge matters including the Requirements in Schedule 3 and other consents and approvals required under the Order. This appeal process is considered proportionate and justified in light of the size and scale of the authorised development proposed by the Order to ensure the delivery of the authorised development.

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<sup>5</sup> Article 11 (Power to layout, etc., of streets), article 12 (Street works), article 16 (Temporary stopping up of streets), article 18 (Access to works), article 21 (Traffic regulation measures), article 22 (Discharge of water) and article 24 (Authority to survey and investigate land).

***Article 79 (Application, exclusion and modification of legislative provisions) and 80 (Amendment of local legislation)***

9.27 Articles 79 and 80 which deal with the application and modification of legislative provisions. These articles enable the application, exclusion and modification of legislation set out in Schedule 20 (Miscellaneous controls). The power to disapply legislation, including local legislation, is provided for under section 120(5)(a) and (b) of the 2008 Act.

9.28 Schedule 20 is divided into two parts: Part 1 which sets out the statutes which will be affected by the DCO; and Part 2 which sets out the local byelaws that are proposed to be disapplied.

9.29 Under Part 1, the following statutes and regulations that are proposed to be modified or excluded:

9.29.1 **Highways Act 1980:** Clause 2 of Schedule 20 disapplies sections 141, 169 171A and 173 of the Highways Act 1980. These sections place restrictions on planting in or near carriageways, require licences to construct scaffolding, pay occupation fees, and impose controls on the construction of hoarding. These have been disapplied as they would interfere with the undertaker's carrying out the authorised development and are adequately controlled through other documents such as the Wylfa Newydd CoCP, A5025 Off-line Highway Improvements sub-CoCP and the DAS.

9.29.2 **Community Infrastructure Levy Regulations 2010 (“CIL Regulations”):** Clause 3 of Schedule 20 clarifies that, for the purposes of the CIL Regulations, any building within the authorised development fall within the exemption under regulation 6 and will not to be considered as “development” for the purposes of levying CIL. This considered appropriate as the authorised development already includes works to improve existing infrastructure (such as the A5025), and those elements that have the potential to impact (such as the Site Campus) are temporary and nature and provision has been made within those works to include additional infrastructure to meet the expected demand. Precedent for this approach can be found in Schedule 19 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

9.29.3 **New Roads and Street Works Act 1991:** A number of provisions in Part 3 of the 1991 Act have been disapplied by clause 4 of Schedule 20 and will not apply when the undertaker is carrying out street or highway works under the Order. This is considered appropriate as these sections are either not relevant to the authorised development, are managed through either the powers in the Order, the protective provisions relating to apparatus owned by statutory undertakers in Schedule 16 of the Order, or are addressed through the Wylfa Newydd CoCP, Wylfa Newydd CoOP and/or relevant sub-CoCPs which control how the undertaker carries out the construction of the authorised development and works in streets and highways.

#### 9.29.4 TCPA:

- (a) *Section 57(2):* The Order defines certain works as “specific associated development works” which, though temporary in nature, would be in place for a considerable period of time for the purposes of supporting construction activities (for example, six to ten years). The “specific associated development” is defined in article 2 as Work No. 3A (Site Campus), 6 (the Park and Ride Facility at Dalar Hir) and Work No. 7 (the Logistics Centre at Parc Cybi).

As the sites of these works are intended to be revert to their original use following construction, clause 5(1) of Schedule 20 clarifies that section 57(2) of the 1990 Act will apply to those works so that, at the end of such works, planning permission will not be required for the resumption of the purpose for which that land was normally used before the development consent was granted. This will ensure that any subsequent user of those sites is not required to obtain a change of use planning permission to use the site for its previous purpose. This provision in Schedule 20 has been based on an equivalent provision in the Hinkley Point C (Nuclear Generating Station) Order 2013 and the Hinkley Point C Connection Project Order 2016.

- (b) *Section 106:* Clause 5(2) of Schedule 20 clarifies that the undertaker, and any transferee or licensee under article 9 of the Order, is to be deemed a person with an interest in the Order Land, or any part of it. This has been included because the undertaker does not own all of the land comprising the Order Limits (although it does have power to compulsory acquire land where required). As the section 106 agreement may be entered into at a time where the undertaker does not have full ownership or interests in the Order Land, this clause provides that it may still enter into a section 106 agreement in respect of the entire land comprising the Order Limits.
- (c) *Section 239:* This section has been included in Schedule 20 for the avoidance of doubt and to confirm that any land that is acquired, or in which the undertaker acquires a right, which may consist of a burial ground, or part of a burial ground may still be used by the undertaker for the purposes of the construction, operation or maintenance authorised development. This clause is subject to article 72 (Removal of human remains) which sets out the process for the removal and reinternment of any human remains in or upon the land.
- (d) *CoPA:* Clause 6 of Schedule 20 has been included to ensure that IACC must take into account the thresholds outlined in the Wylfa Newydd CoCP and any relevant sub-CoCPs before it issues a notice under section 60(5). This is appropriate

because the *thresholds* set out in the CoCPs have been assessed under the Environmental Statement and will be approved through the grant of DCO and should therefore form a material consideration in the issuing of notices under section 60. Clause 6(2) also confirms, for the avoidance of doubt, that the underground tunnelling works must be regulated by sections 60 and 61 of the CoPA.

**9.29.5 Local Government (Miscellaneous Provisions) Act 1976:** Section 42 of the Local Government (Miscellaneous Provisions) Act 1976 has been disapplied under clause 7 of Schedule 20 to avoid any future planning enactments undermining the powers and rights provided to the undertaker under the Order.

9.30 In respect of Part 2, only one byelaw is proposed to be disapplied – the Twrcelyn Rural District Council Foreshore Byelaw 1952. This byelaw, which was adopted by IACC upon amalgamation, imposes a number of restrictions on the use of the foreshore within the parishes Llanbadrig and Llanallgo (namely, the ability to erect structures or park or drive vehicles along the foreshore) would impact on the undertaker's ability to construct the Marine Works under the DCO.

### **Article 81 (Crown rights)**

9.31 Article 81 contains a saving for Crown rights. It protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions and ensures that written consent from the Crown or the Welsh Government is required where any land, hereditaments or rights are to be taken, used, entered or interfered with as a result of granting the Order. It has been included as the Marine Works (Work No. 1E, 1F, 1G, 1H) extends over the seabed within Cemlyn Bay.

9.32 The wording of this article has been expressly agreed with the Crown Estate and the Welsh Government has not raised any objections.

### **Article 82 (Guarantees in respect of payment of compensation)**

9.33 Article 82 imposes a restriction that compulsory acquisition powers cannot be exercised unless, and until, the undertaker (or any subsequent undertaker) has demonstrated that funding will be in place to cover any compensation claims. The amount of the guarantee must be approved by the Secretary of State and the undertaker must provide certain information in order to assist the Secretary of State in determining whether the amount proposed is sufficient to cover liability in respect of compensation claims.

9.34 Article 82(5) and (6) provides that the undertaker must keep the approved guarantee in place for a period of 10 years from the exercise of the relevant powers; however, the sum to be held can be reduced to reflect payments made by claimants with the approval of the Secretary of State. As noted in respect of article 9, in the event of a transfer, the transferee would be required to provide an equivalent guarantee for compensation under this article.

9.35 With the exception of paragraph (6), drafting for this article has been based on corresponding articles in precedent DCOs such as Swansea Bay Tidal Generating Station Order 2015/1386, Eggborough Gas Fired Generating Station Order 2018/1020, Keuper Underground Gas Storage Facility Order 2017/433 and Hornsea One Offshore Wind Farm Order 2014/3331.

### **Article 83 (Funding for implementation of the authorised development)**

9.36 Article 83 builds on article 82 by preventing the undertaker from implementing the Order unless it has satisfied the Secretary of State that the Project is likely to be undertaken and there will be no obstacles to sourcing and securing the necessary funding to implement the Project. This replicates the policy test in the Planning Act 2008: Application Form Guidance (paragraph 26) that is applied by the Secretary of State in considering the adequacy of a DCO applicant's funding statement.

9.37 Article 83(2) excludes Work No.12 from the need to demonstrate funding for the implementation of the Project; however, the undertaker is still required to provide a guarantee in respect of Work No.12 that must be approved by the Secretary of State before the works can commence. This is considered appropriate given the discrete nature and scale of these works and the fact that these may be undertaken ahead of the full implementation of the Project.

### **Article 84 (Control documents and schemes)**

9.38 Article 84 is an operative provision to give effect to Schedule 21 (Control documents and schemes) of the purposes of identified Requirements in Schedule 3 of the Order.

### **Article 85 (National Trust Land)**

9.39 Article 85 provides that no powers or rights under the Order may be exercised in respect of Plot 61 which is identified in the Book of Reference as land belonging to National Trust.

9.40 Plot 61 includes a watercourse to the north of Cafnan where there is a rebuttable presumption that half of the bed of the stream is owned by the National Trust. This is due to the application of the *ad medium filum* rule which provides the riparian owner of land which abuts a non-tidal river or stream also owns the bed of the river or stream, up to the centre point. The Special Category Land Plan [REP6-021] shows its location.

9.41 Although the stream is within the Order Land, the plot has been classified as Class 6 (Land not subject to powers of acquisition) as there is no intention to carry out works or exercise powers of compulsory acquisition. This is further demonstrated in the Land Plans [REP6-021], the Book of Reference [REP6-011, REP6-012 and REP6-013], the relevant Work Plan [REP2-015] and Appendix 11-1 to this Statement.

9.42 National Trust, however, remains concerned about the inclusion of this land within the Order Limits. To address these concerns, Horizon has included a

new article in the Order explicitly providing that the undertaker may not exercise any rights or powers under the DCO in respect of Plot 61 as shown in the Book of Reference. This article is preferred over amending the Order Plans which would be a considerable and costly exercise given the number of plans that would require change.

### **Article 86 (Marine enforcement authority)**

9.43 This article clarifies that, for the purposes of the 2008 Act, the Welsh Ministers will be the enforcement authority for any breaches of the DCO below the mean low water spring. This is because the 2008 Act only specifies the enforcement authority down to the low water mark and so there is a gap as to who would be the enforcement authority for any breaches below that line.

## **10. Schedules**

10.1 Schedules 1 to 19 are summarised below.

### ***Schedule 1 – Authorised Development***

10.2 Schedule 1 specifies numbered works which comprise the authorised development and other associated development works. There are no ancillary works. The numbered works should be read alongside the Works Plans and Parameter Plans.

10.3 The following works have been identified in Schedule 1 as comprising an NSIP (identified by \* within Schedule 1):

- 10.3.1 Work No.1 relates to works within the WNDA which are necessary for the construction and operation of the nuclear generating station.
- 10.3.2 Work No. 4 relates to the Grid Connection. The undertaker has identified this as part of the NSIP because this work is an integral component of the NSIP. This follows the approach taken in Schedule 1 to the Hinkley Point C (Nuclear Generating Station) Order 2013 and Schedule 1 to the Glyn Rhonwy Pumped Storage Generating Station Order 2017.
- 10.3.3 Work No. 5 relates to the combined Off-Site Power Station Facilities which include the Mobile Emergency Equipment Garage, the Alternative Emergency Control Centre and the Environmental Survey Laboratory. These works have been identified as part of the NSIP as they are required under UK nuclear regulations.

10.4 A few buildings within Schedule 1 have been identified with a †. This indicates the buildings that are listed under multiple work packages; however, the construction of these buildings will only occur under one work package. The final location of these building will be determined in the detailed design stage. This applies to the Gas Cylinder Storage Houses (buildings 1-208 and 2-208) which could be located within Work No.s 1A, 1C, 1K, 1L or 1M); and 9-308 the Vehicle Inspection Bay (9-308) which could be located in Work No.1K

or 1L).

- 10.5 All other works have been identified as associated development necessary to support the construction and operation of the NSIP.
- 10.6 Schedule 1 also includes catch-all provision which set out a number of minor works that are common to a number of work packages. These include works such as landscaping and drainage, establishment of construction compounds, vegetation clearance, works to trees, shrubs and hedges and utilities installation. The intention of this catchall is to identify works that are associated with the construction, operation and maintenance of the authorised development but which can be undertaken anywhere within the Order Limits, not just identified work areas.

### ***Schedule 2 – Approved Plans***

- 10.7 Schedule 2 (Approved plans) lists the plans submitted with the application and to be certified by the Secretary of State. These include:
  - 10.7.1 **Order Limits Plans:** These plans set out the Order Limits for the authorised development. The Order Limits define the area within which the authorised development may be constructed, operated and maintained under article 3 of the Order (Development consent, etc. granted by Order).
  - 10.7.2 **Works Plans:** These plans identify the Order Limits for the authorised development identified in Schedule 1 as well as the limits of deviation for each of the Works in that Schedule as referred to in article 4 of the Order (limits of deviation).
  - 10.7.3 **Land Plans:** These plans identify limits of the land to be acquired and used ("the LLAU") and the individual plots over which the undertaker intends to exercise its compulsory acquisition powers. The plot numbers on the Land Plans may be cross-references to the plots as contained in the Book of Reference.
  - 10.7.4 **Parameter Plans:** These plans identify the zones within which buildings, structures and works identified in the parameter tables in the Requirements must be located. They provide an additional layer of control by further controlling where the undertaker can construct certain elements within the limits of deviation in the Works Plans.
  - 10.7.5 **Rights of Way Plans:** These plans identify the existing public and private rights of way that will be stopped up or diverted and any new rights of ways to be provided, either during construction or operation, pursuant to articles 14, 16, 18 of the Order.
  - 10.7.6 **Detailed Design Drawings:** These are the detailed design plans that the undertaker is seeking approval for specific works. Detailed Design Drawings are provided for Works No.s 6, 7, 12, 16 and the majority of Works No.s 8 to 11 (except for overbridges, viaducts and underpasses).

In the event that the undertaker does not wish to proceed with these designs, under the Requirements it can submit revised designs for approval in accordance with the Parameter Plans and parameters. For all other Work No.s that have illustrative plans, detailed design drawings will be submitted for approval in accordance with the Requirements in Schedule 3 of the Order.

### ***Schedule 3 – Requirements***

10.8 The Requirements in Schedule 3 of the Order are structured as follows:

10.8.1 **Project-Wide requirements:** These are over-arching requirements that apply to all works packages, including, but not limited to, time-limits for commencement (8 years) and overall phasing of the Wylfa Newydd DCO Project, and compliance with the overarching Wylfa Newydd Code of Construction Practice ("**Wylfa Newydd CoCP**"); and

10.8.2 **Works-specific requirements:** These are requirements that apply to a specific works package(s) within the Wylfa Newydd DCO Project (e.g. requirements relating only to Parc Cybi). Works-specific requirements relate to compliance with the relevant sub-CoCPs and Management Strategies; parameters (where applicable); phasing of construction; requirement to submit Management Schemes and design details for approval; and operational requirements. The Works-specific requirements have been structured as follows:

- (a) Site Preparation and Clearance (Work No. 12);
- (b) Power Station Site (includes work packages relating to the Power Station, Marine Works, Site Campus, Diversion Works, and Grid Connection) and the diversion and realignment of a tributary (Works No. 1 – 4 and 16);
- (c) Off-Site Power Station Facilities (Work No.5);
- (d) Dalar Hir Park and Ride (Work No. 6);
- (e) Parc Cybi Logistics Centre (Work No.7);
- (f) A5025 Off-line Highway Improvements (Works No. 8 – 11); and
- (g) Ecological Compensation Sites (Works No.13 – 15).).

10.9 The Requirements in Schedule 3 generally fall within the following categories:

10.9.1 **Parameters for construction of building, structures and works:** In order to cope with inevitable change through the site-specific design post-Generic Design Assessment, the Nuclear Site Licence and design development processes, the undertaker has proposed a parameter based approach for the construction and operation of the Power Station. Parameters are provided for both construction (for example, the construction platforms for temporary construction

buildings and facilities, such as the construction batching plant and scaffolding) and final operational designs.

Maximum and minimum parameters (such as limits on height and location of buildings) have been set out for key buildings, structures and works (such as dredging depths and volumes) in order to keep the development within the defined envelope which is sufficiently flexible to accommodate a reasonable level of change. These parameters need to be read alongside the Parameter Plans which identify the zones within which buildings, structures, and works identified in 'parameter tables' must be located.

The parameters therefore provide an additional layer of restriction by further controlling where construction of certain elements can take place within the limits of deviation in article 4 and shown on the Works Plans. (For the avoidance of doubt, Schedule 3(5) clarifies that the parameters stated for buildings and parameters do not include any external projections such as telecommunications infrastructure or mechanical plant. This is to confirm that the maximum heights etc. relate to the building element, and so external projections will be in addition to those maximum heights).

**10.9.2 Compliance with control documents:** Under the Requirements, construction, operation and maintenance must be carried out either "in accordance" or in "general accordance" with the control documents. The control documents, set out below, set out key controls for the undertaker in carrying out the Wylfa Newydd DCO Project and impose controls in relation to construction methodologies and activities, phasing, design and workforce behaviour. The control documents, which will be certified through the DCO, include:

- (a) *Construction Method Statement ("CMS")*: The CMS sets out the construction methodologies, works, and machinery required for works on the Main Site. The methodologies identified in the CMS have been used as the basis of the environmental impact assessment. The construction of the Power Station Main Site will be undertaken in general accordance with the CMS and the undertaker will be able to deviate from the methodologies used from those identified in the CMS provided there are no materially new or different environmental effects from those identified in the Environmental Statement.
- (b) *Phasing Strategy*: The Phasing Strategy identifies when key mitigation (such as the Site Campus and the Park and Ride facility) will be delivered and operational. This is to ensure that key mitigation, which the undertaker will have authorisation to build under Schedule 1 of the Order, is secured and will be brought forward. The construction of the Wylfa Newydd DCO

Project will be undertaken in accordance with the phasing outlined in the Phasing Strategy.

- (c) *The Wylfa Newydd CoCP and sub-CoCPs:* The Wylfa Newydd CoCP, together with location-specific sub-CoCPs, set out how construction activities will be managed and controlled in order to deliver the mitigation commitments as set out in the Environmental Statement as well as other assessment processes undertaken (e.g. Habitat Regulations Assessment). Sub-CoCPs are provided for the Main Site, Marine Works, Off-Site Power Station Facilities, the Logistics Centre, the Park and Ride Facility and the A5025 Off-line Highway Improvements. These sub-CoCPs set out specific controls relevant to those locations which are not adequately covered under the Wylfa Newydd CoCP. Each chapter in the Wylfa Newydd CoCP and sub-CoCP relates to a strategy to control general and topic-specific environmental effects. The CoCP and sub-CoCPs will be certified documents, compliance of which will be secured through the Requirements.
- (d) *The Wylfa Newydd Code of Operational Practice ("CoOP"):* Similar to the Wylfa Newydd CoCP and sub-CoCPs, the Wylfa Newydd CoOP sets out the controls that will apply during the operation of the Wylfa Newydd DCO Project (for example operational hours for the Power Station). The CoOP will be a certified document and the undertaker will be required to comply with it under the Requirements. At this stage, there are no location-specific sub-CoOPs; however, the Requirements provide the opportunity for the undertaker to prepare and submit sub-CoOPs for approval at a later stage if required.
- (e) *Landscape and Habitat Management Strategy ("LHMS"):* The LHMS sets out how key landscape elements and habitats within the WNDA (and other select areas) will be created and managed in order to mitigate the adverse ecological effects identified in the Environmental Statement. This will be a certified document and will include the illustrative reference point drawings as an appendix. The LHMS is a standalone strategy; rather than forming part of one of the CoCPs.
- (f) *Design and Access Statement ("DAS"):* The DAS sets out the "design principles" that will guide the undertaker to construct the authorised development, and illustrative design concepts which demonstrate how the Wylfa Newydd DCO Project could be brought forward in accordance with those principles. It also provides discussion on the parameters and how they are intended to operate in practice.

The DAS is divided into three volumes: Introduction (volume 1) Power Station (volume 2); Off-Site Power Station Facilities and Associated Development (volume 3). For the Main Site, the

DAS sets out the building design principles and landscape principles are set out in the LHMS. For all other works, the DAS contains landscape and building design principles and the Requirements require detailed building and/or landscape design to be submitted and approved in accordance with the design principles in the relevant volume of the DAS (depending on the location).

- (g) *Workforce Management Strategy ("WMS")*: The WMS sets out the principles that the undertaker and its partners will follow to manage and control the workforce. Schedule 3 of the Order includes a requirement which requires the undertaker to develop and implement a Code of Conduct in accordance with the principles set out in the WMS for the management of employer and workforce conduct, as well as specific protocols for those residing at the Site Campus. Contractors and workers will then be contractually required to comply with the Code of Conduct during the construction of the authorised development. The undertaker will be required to ensure that construction is undertaken in accordance with the WMS via a Requirement.
- (h) *Detailed Design Drawings*: As discussed above at paragraph 10.7.6. The undertaker will be required to undertake works in accordance with the Detailed Design Drawings.

10.9.3 The Requirements enable revisions to these control documents where this is agreed to by the relevant planning authority, provided such revisions do not give rise to materially new or materially different environmental effects from those assessed in the Environmental Statement. The ability to revise the control documents is considered appropriate at ensure that the Wylfa Newydd DCO Project can respond to changes in construction methodologies or design requirements (in accordance with the parameters).

10.9.4 **Process for approval of detailed designs and schemes:** The Requirements set out the process that the undertaker must follow in seeking approval for detailed designs and identified schemes following grant of the Order. The requirements outline the details that will be required to be included in any application by the undertaker for the discharge of these documents. Schedule 21 (Control documents and schemes) sets out the detail of what must be included within the Requirements and who is to be consulted by the discharging authority in respect of that scheme.

Once approved, the undertaker must undertake construction or operation of the relevant works in accordance with the approved designs or schemes. However, in order to preserve flexibility, the undertaker may seek approval to submit revised plans or schemes provided such plans are also in accordance with the documents and

items listed above. Where a revised plan or scheme is approved, the undertaker must undertake construction in accordance with the approved plan or scheme.

**10.9.5 Pre-commencement surveys:** There are a number of pre-commencement surveys that are required to be undertaken prior to commence of works, or works on particular parts of a site. The purpose of these surveys is to identify the presence of protected or vulnerable species or to establish baseline datasets prior to construction.

**10.9.6 Various construction, operational and decommissioning requirements:** Where specific controls have been set out in the Environmental Statement, these have been replicated in the Requirements (for example, requirements relating to restrictions on construction and operational parking; notification of key Project milestones; disposal of dredged materials; and preparation of site specific decommissioning schemes). The number of these requirements are limited; as the majority of the controls are set out in the various control documents (such as the CoCPs) which the undertaker will be required to comply with during the course of the Wylfa Newydd DCO Project.

10.10 The Requirements identify different discharging authorities depending on the Works and the nature of the Requirement: IACC is the discharging authority in respect of land above the MHWS; and NRW is the discharging authority in respect of land seaward of the MHWS and the Marine Works. Where a structure overlaps the MHWS, IACC and NRW will be the discharging authorities in relation to their respective parts in accordance with a Memorandum of Understanding.

10.11 Although some Requirements specifically identify the consultee that should be consulted by the discharging authority in considering any discharge application, Schedule 19 of the Order provides that the discharging authority can consult any statutory consultee it considers relevant.

10.12 These Requirements are provided for under section 120(1) of the 2008 Act, which enables a DCO to include requirements in connection with the development for which consent is granted.

#### ***Schedule 4 – Control documents and schemes***

10.13 This Schedule sets out the details relating to the various schemes identified within the requirements for approval by the discharging authority following grant of the DCO. This schedule identifies the area the scheme applies to, the details that it must be prepared in accordance with and the relevant statutory consultee.

#### ***Schedule 5 – Streets subject to alteration of layout***

10.14 Schedule 5 lists the streets that are subject to alteration of layout in accordance

with article 11 of the Order. It also states which of these streets will be altered on a temporary or permanent basis.

***Schedule 6 – Streets subject to street works***

10.15 This Schedule lists the streets that are subject to street works pursuant to article 12 of the Order.

***Schedule 7 – Streets or private means of access to be permanently stopped up or extinguished***

10.16 This Schedule sets out the streets, PRoWs or PMAs to be permanently stopped up in accordance with article 14 of the Order and as shown on the Right of Way Plans. It also states whether a substitute street, PRoW or PMA is to be provided and (if so) the extent of that substitute.

***Schedule 8 – Status of footpaths created or improved***

10.17 This Schedule sets out the footpaths which will be created or improved pursuant to the powers under the Order and the status they will have following approval by the highway authority in accordance with an agreed footpath implementation plan.

***Schedule 9 – Streets to be temporarily stopped up***

10.18 This Schedule sets out the streets, PRoWs or PMAs to be temporarily stopped up in accordance with article 16 of the Order and as shown on the Right of Way Plans.

***Schedule 10 – Traffic Regulation Measures***

10.19 This Schedule identifies those streets that will be subject to permanent and temporary TROs in accordance with article 21 of the Order and the controls that are sought to be imposed (for example, speed and waiting restrictions around Project sites) for operational and safety purposes.

***Schedule 11 – Land in which only rights may be acquired***

10.20 This Schedule identifies the land within the Order Limits which the undertaker only proposes to acquire rights to, rather than acquire outright, under article 27 of the Order and as shown on the Land Plans.

***Schedule 12 – Modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants***

10.21 Schedule 12 relates to articles 27 and 29 of the Order and sets out the proposed modifications to the existing compensation regime for the compulsory acquisition of land. The Schedule clarifies that the existing compensation applies, with the necessary modifications to extend the compensation provisions concerning the compulsory purchase of land and interests generally

to compulsory acquisition by the creation of new rights and imposition of restrictive covenants under this Order.

***Schedule 13 – Land of which only subsoil more than 9 metres beneath surface may be acquired***

10.22 This Schedule identifies the land within the Order Limits in which the undertaker only proposes to acquire rights to the subsoil located 9 metres below the surface of that land under article 32 of the Order and as shown on the Land Plans. For the identified land, the undertaker does not intend to also acquire rights to the surface of that land, or to acquire the land outright.

***Schedule 14 – Land of which only temporary possession may be taken***

10.23 This Schedule identifies plots of land that the undertaker intends to temporarily possess for the purposes of constructing the authorised development under articles 35 and 36 of the Order and as shown on the Land Plans. It also makes clear the purpose for which such temporary possession may be taken.

***Schedule 15 – Protective Provisions***

10.24 This Schedule details the protective provisions which will apply to statutory undertakers with apparatus within the Order Limits.

***Schedule 16 – Limits of Harbour***

10.25 This Schedule describes the limits of the harbour created by this Order pursuant to article 48 of the Order. The description in Schedule 16 is supported by the Statutory Harbour Authority Boundary Plan (WN0902-HZDCO-MRN-DRG-00034) in Schedule 2 of the DCO.

***Schedule 17 – Removal of hedgerows***

10.26 This Schedule sets out the important hedgerows within the Order Limits that the undertaker proposes to remove during construction, maintenance or operation of the authorised development in accordance with article 75 of the Order.

***Schedule 18 – Certified Documents***

10.27 This Schedule sets out all the control documents and plans that will be certified under the Order in accordance with article 76 of the Order. Revision numbers will be included to ensure that the final versions of each document or plan are clearly identified in the final Order.

***Schedule 19 – Procedure for approvals, consents and appeals***

10.28 This Schedule sets out the procedures that apply to any approvals, consents and appeals under the Requirements in Schedule 3 and various approvals and consents under the Order. This Schedule relates to article 79 and has been based on the approval and appeal procedures set out in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and the Hinkley Point C (Nuclear Generating Station) Order 2013.

10.29 The approval process differs depending on the status of the Requirement:

- 10.29.1 For major detailed requirements, approvals must be given within 8 weeks of receiving the application or further requested information. Major detailed requirements are those requirements that relate to key elements of the Wylfa Newydd DCO Project such as detailed design approval for the main components of the authorised development (i.e. the Power Station, Site Campus, Marine Works, and landscaping within the WNDA) and approval of key management plans (i.e. management of specific habitat areas and decommissioning plans)
- 10.29.2 For minor detailed requirements, approvals must be given within 5 weeks of receiving the application or further requested information. Minor detailed requirements are those requirements that seek revisions to approved plans or designs, approvals for minor elements of works (such as fencing designs), relate to discrete works within the authorised development (i.e. the Ecological Compensation Sites, or creation of various habitat enhancement areas) or seek revisions to minor requirements such as car parking controls.

***Schedule 20 – Miscellaneous controls***

10.30 This Schedule sets out the legislation that will be modified or excluded under articles 80 and 81 the Order, including local legislation and byelaws. It is separated into two parts: Part 1 relating legislative provisions and Part 2 relating to local legislation and byelaws. Discussion regarding the statutes, regulations and byelaws that are affected by the Order is set out at paragraph 9.28.