STATUTORY INSTRUMENTS

2026 No. 0000

INFRASTRUCTURE PLANNING

The Connah's Quay Low Carbon Power Order 202*

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

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An application has been made to the Secretary of State under section 37 (Applications for orders granting development consent) of the Planning Act 2008(**a**) ("the 2008 Act"), and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009(**b**) for an order granting development consent.

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

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

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

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

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

(**a**) 2008 c. 29. Section 37 was amended by section 128(2) and Schedule 13, Part 1, paragraphs 1 to 5 of the Localism Act 2011(c. 20).
(**b**) S.I. 2009/2264 as amended by the Infrastructure Planning (Miscellaneous Provisions) Regulations 2024/332.
(**c**) S.I. 2010/103. This instrument was amended by S.I. 2012/635.
(**d**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**e**) S.I. 2017/572.
(**f**) Section 104(2) was amended by paragraph 49 of Schedule 13 to the Localism Act 2011 and section 58(5) of the Marine and Coastal Access Act 2009 (c.23).
(**g**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**h**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**i**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**j**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**k**) Ibid.

PART 1

Preliminary

Citation and commencement

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

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

Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

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

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

"1995 Order" means the Town and Country Planning (General Permitted Development) Order 1995 (**j**);

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

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

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

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

"access, streets, rights of way and rights of navigation plans" means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

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

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

(**a**) 1961 c. 33.
(**b**) 1965 c. 56.
(**c**) 1971 c. 80.
(**d**) 1980 c. 66.
(**e**) 1981 c. 66.
(**f**) 1984 c. 27.
(**g**) 1989 c. 29.
(**h**) 1990 c. 8.
(**i**) 1991 c. 22.
(**j**) S.I. 1995/418.
(**k**) 2003 c. 21.
(**l**) 2008 c. 29.
(**m**) S.I. 2016/1154.
(**n**) S.I. 2017/362.
(**o**) 2008 c. 29.

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

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

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

"book of reference" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"brought into commercial use" means first brought into commercial use following commissioning;

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

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

"carbon dioxide capture plants" means the carbon dioxide capture plants, which are designed to capture a minimum rate of 95% of the carbon dioxide emissions of the generating station operating at full load;

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

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

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

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

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

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

"design principles document" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"demolition plan" means the plan named 'figure 5-2 – demolition areas' in the environmental statement which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"discharging authority" means any body responsible for giving any consent, agreement or approval required by a provision of this Order, or for giving any consent, agreement or approval further to any document referred to in any such provision;

"electronic transmission" means a communication transmitted—

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

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

(**a**) 1971 c. 80.

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

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

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

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

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

"environmental statement" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

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

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

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

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

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

"first unilateral undertaking" means the Deed of Unilateral Undertaking Development Consent Obligations dated 8 June 2026 which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.) and includes any modifications which are agreed with the Secretary of State;

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

"Flintshire County Council" means Flintshire County Council of Ty Dewi Sant, St David's Park, Ewloe, Flintshire CH5 3FF and includes any successor in function to Flintshire County Council;

"framework construction environmental management plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"framework construction traffic management plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"hedgerow removal plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

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

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

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

"land plans" means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"LEMP" means the landscape and ecological management plan;

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

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

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

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

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

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

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

"Nitrogen Management Plan" has the same meaning as set out in the first unilateral undertaking;

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

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

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

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

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

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

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

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

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

"relevant navigation authority" means the navigation authority for the watercourse to which the provision relates;

"requirements" means, save in respect of Schedule 13 (protective provisions), those matters set out in Schedule 2 (requirements) to this Order and a reference to a numbered requirement is a reference to the requirement imposed by the corresponding numbered paragraph of that Schedule and for the purposes of Part 2 of Schedule 2 (requirements) also includes all consents, agreements or approvals required in relation to Schedule 16 (protection of the coherence of the national site network) of this Order;

"SAC Management Contribution" has the same meaning as set out in the first unilateral undertaking;

"SAC Management Purpose" has the same meaning as set out in the first unilateral undertaking;

"Saltmarsh Indexation Payment" has the same meaning as set out in the second unilateral undertaking;

"Saltmarsh Management Area Lease" has the same meaning as set out in the second unilateral undertaking;

"Saltmarsh Management Contribution" has the same meaning as set out in the first unilateral undertaking;

"Saltmarsh Management Purpose" has the same meaning as set out in the first unilateral undertaking;

"second unilateral undertaking" means the Deed of Unilateral Undertaking Development Consent Obligations dated 29 October 2026 which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.) and includes any modifications which are agreed with the Secretary of State;

"Supplemental Saltmarsh Management Contribution" has the same meaning as set out in the second unilateral undertaking;

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

"site enabling works" means operations consisting of—

(a) site preparation works;

(b) remediation works;

(c) environmental surveys;

(d) investigation, site or utility surveys;

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

(f) installation of temporary amphibian and reptile fencing;

(g) the diversion or laying of services;

(h) temporary drainage works;

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

(j) erection of temporary contractors' facilities; and

(k) environmental mitigation measures;

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

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

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

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

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

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

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

"Traffic Regulation Measures Plans" means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

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

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

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

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

"works plans" means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.).

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

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

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

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

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

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

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

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

PART 2

Principal Powers

Development consent etc. granted by the Order

3. Subject to the provisions of this Order, the requirements in Part 1 of Schedule 2 (requirements) and Schedule 16 (protection of the coherence of the national site network) the undertaker is granted development consent for the authorised development to be carried out and maintained.

Operation and use of the authorised development

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

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

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

Power to maintain the authorised development

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

Limits of deviation

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

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

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

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

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

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

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

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

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

Benefit of the Order

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

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

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

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

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of the Order

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

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

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

(2) Where an agreement has been made in accordance with any transfer or grant under paragraph (1) references in the Order to the undertaker, except in paragraph (4), includes references to the transferee or lessee.

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

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

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

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

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

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

(f) the transferee or lessee is a water undertaker within the meaning of the Water Industry Act 1991(**b**); or

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

(i) no such claims have been made;

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

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

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

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

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

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

(**a**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000 (c. 27).
(**b**) 1991 c. 56.

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

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

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

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

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

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

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

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

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

(e) the provisions of the Neighbourhood Planning Act 2017(**d**) in so far as they relate to the temporary possession of land under articles 35 (temporary use of land for carrying out the authorised development) and 36 (temporary use of land for maintaining the authorised development).

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

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

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

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

(4) Section 42 (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) of the Local Government (Miscellaneous Provisions) Act 1976(**f**)

(**a**) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

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

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

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

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

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

will not apply to the extent that it would make provisions of this Order authorising the construction, operation and maintenance and decommissioning of the authorised development subject to other provisions.

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

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

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

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

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

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

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

Planning Permission

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

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

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

(2) Where the undertaker identifies an incompatibility between a condition of a planning permission and this Order that engages paragraph (3), it must notify the relevant planning authority and use reasonable endeavours to notify the current beneficiary of the affected planning permission as soon as reasonably practicable.

(3) Any development or any part of a development within the Order limits which is constructed or used under the authority of a planning permission is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(**a**) S.I. 1999/182. Schedule 1 was amended by regulation 2(3) of the Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012/792.
(**b**) 1967 c. 10. Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.
(**c**) S.I. 1997/1160.
(**d**) 1989 c. 29.

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

(5) In this article—

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

(b) "planning permission" means planning permission granted or deemed to be granted under the powers conferred by the 1990 Act including planning permission deemed to be granted under article 3 (permitted development) of the 1995 Order.

Defence to proceedings in respect of statutory nuisance

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

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

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

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

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

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

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

(3) Where the relevant planning authority is acting in accordance with section 60(4) and section 61(4) of the Control of Pollution Act 1974 in relation to the construction of the authorised development then the relevant planning authority must also have regard to the controls and

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

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

measures relating to noise referred to in the CEMP approved under Part 1 of Schedule 2 (requirements).

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

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

PART 3

Streets

Street works

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

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

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

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

(d) place apparatus in or under the street;

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

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

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

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

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

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

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

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

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

(3) The undertaker, during and for the purposes of carrying out, maintaining or operating the authorised development, may temporarily close, alter or divert any street or private means of access and may for any reasonable time—

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

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

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

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

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

(6) Without limiting the scope of the powers conferred by paragraph (1) but subject to paragraph (7), the undertaker may, for the purposes of the authorised development, or for purposes ancillary to it, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out or maintaining the works set out in paragraph (1).

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

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

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

Power to alter layout, etc. of streets

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

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

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

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

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

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

(e) make and maintain crossovers and passing places;

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

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

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

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

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

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

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

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

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

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

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

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

Application of the 1991 Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.—(1) During and for the purposes of carrying out or maintaining the authorised development, the undertaker may temporarily or permanently close, stop up, prohibit the use of, restrict the use of, alter or divert any street, public right of way or right of navigation and may for any reasonable time—

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

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

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

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

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

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

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

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

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

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

without the consent of the street authority or relevant navigation authority (as applicable), and the street authority or relevant navigation authority (as applicable) may attach reasonable conditions to any such consent.

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

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

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

Temporary restriction of use of streets

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

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

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

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

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

(4) Without limiting paragraph (1), the undertaker may temporarily close, alter or divert the streets set out in column (2) of Schedule 6 (streets to be temporarily closed or restricted) to the extent specified, by reference to the letters and numbers shown on the access, streets, rights of way and rights of navigation plans, in column (3) of that Schedule.

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

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

Access to works

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

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

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

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

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

Agreements with street authorities

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

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

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

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

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

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

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

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

(f) such works as the parties may agree.

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

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

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

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

Use of private roads

19.—(1) Subject to paragraphs (2) and (3), the undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction, maintenance, operation or decommissioning of the authorised development.

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

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

Traffic regulation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 4

Supplemental powers

Discharge of water

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

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

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

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

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

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

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

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

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

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

(8) In this article—

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

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

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

Maintenance of drainage works

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

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

Authority to survey and investigate the land

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

(a) survey or investigate the land;

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

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

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

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

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

(a) water;

(b) air;

(c) soil or rock;

(d) its flora;

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

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

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

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

(a) must, if so required before or after entering the land, produce written evidence of their authority to do so; and

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

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

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

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

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

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

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

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

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

PART 5

Powers of Acquisition

Compulsory acquisition of land

24.—(1) The undertaker may

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

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

(2) This article is subject to article 25 (time limit for exercise of authority to acquire land compulsorily), article 26(2) (compulsory acquisition of rights and restrictive covenants) and article 35(8) (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

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

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

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

(2) The authority conferred by article 35 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and restrictive covenants

26.—(1) Subject to the provisions of this article, the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) Subject to the provisions of this article, articles 30 (private rights) and 37 (statutory undertakers) in the case of the Order land specified in column (2) of Schedule 9 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of new rights in the land or the imposition of restrictive covenants under paragraph 25(1) as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 4(8) of Schedule 10 (modification of compensation and compulsory purchase enactments for creation of new rights) to the 1965 Act), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 10 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph 25(1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question other than in respect of the persons listed in article 8 (consent to transfer benefit of the Order) where no such consent is required.

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

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

Statutory authority to override easements and other rights

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

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

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

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

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

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

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

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

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

Compulsory acquisition of land: minerals

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

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

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

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

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

Private rights

29.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 24 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 24.

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 26 (compulsory acquisition of rights and restrictive covenants) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

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

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

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

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

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

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

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

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

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

(7) If an agreement referred to in sub-paragraph 29(6)(b)—

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

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

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

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

Application of the 1981 Act

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

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

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

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

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

"(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are authorised to acquire for the benefit of a statutory undertaker or local authority, in the statutory

undertaker or local authority in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 is completed).".

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

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

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

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

(b) for "the three year period mentioned in section 5A" substitute "the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of The Connah's Quay Low Carbon Power Order 202*".

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

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

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

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

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

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

"(1) This section applies where after the execution of a general vesting declaration a person ("the claimant") claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.".

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

"(1) But see article 32(4) (acquisition of subsoil only) of the Connah's Quay Low Carbon Power Order 202*, which excludes the acquisition of subsoil only from this Schedule.".

(14) References to the 1965 Act in the 1981 Act are to be constructed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 33 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of the land under this Order.

Modification of the 2017 Regulations

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

(**a**) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016.
(**b**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.
(**c**) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.
(**d**) Section 6 was amended by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).
(**e**) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016
(**f**) Section 8 was amended by paragraph 4 of Schedule 18 to the Housing and Planning Act 2016 and section 186(3) of the Levelling-up and Regeneration Act 2023 (c. 55).
(**g**) Section 11 was amended by paragraph 52(3) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.
(**h**) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

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

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

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

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

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

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

Acquisition of subsoil only

32.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 24 (compulsory acquisition of land) and paragraph (1) of article 26 (compulsory acquisition of rights and restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 30 (application of the 1981 Act) or paragraph 4(8) of Schedule 10 (modification of compensation and compulsory purchase enactments for creation of new rights) as the case may be) from applying where the undertaker acquires any part of, or rights in a cellar, vault, arch or other construction forming part of a house, building or manufactory.

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

(a) Schedule 2A to the 1965 Act (as modified by article 33 (modification of Part 1 of the 1965 Act);

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

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

Modification of Part 1 of the 1965 Act

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

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 (application to High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981, the three year period mentioned in section 4" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the 5 year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the Connah's Quay Low Carbon Power Order 202*".

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

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

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

(4) In section 22(2) (interests omitted from purchase), for "section 4 of this Act" substitute "article 25 (time limit for exercise of authority to acquire land compulsorily) of the Connah's Quay Low Carbon Power Order 202*".

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

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

"(2) But see article 32(3) (acquisition of subsoil only) of The Connah's Quay Low Carbon Power Order 202* which excludes the acquisition of subsoil only from this Schedule."; and

(b) at the end insert—

"PART 4

"INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 35 (temporary use of land for carrying out the authorised development) or article 36 (temporary use of land for maintaining the authorised development) of The Connah's Quay Low Carbon Power Order 202*.".

Rights under or over streets

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

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

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

(a) any subway or underground building; or

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

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

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

Temporary use of land for carrying out the authorised development

35.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 25 (time limit for exercise of authority to acquire land compulsorily)—

(a) enter on and take temporary possession of—

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

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

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

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

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

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

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

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

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

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

(2) Not less than 3 months before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph 35(1)(a)(iii).

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

(a) in the case of land specified in paragraph 35(1)(a)(i) and (ii), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Parts 1 and 2 of Schedule 11 (land of which only temporary possession may be taken); or

(b) in the case of any land referred to in paragraph 35(1)(a)(iii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace a building, or structure removed under this article;

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

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

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

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

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

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

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

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph 35(1)(a)(i) and (ii) except that the undertaker is not to be precluded from acquiring new rights over any part of that land under article 26 (compulsory acquisition of rights and restrictive covenants).

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

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

(11) Paragraph (1) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 24 (compulsory acquisition of land) or article 26 (compulsory acquisition of rights and restrictive covenants).

Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the public; or

(c) the surrounding environment,

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

Statutory undertakers

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

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

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

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

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

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 37 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in

consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 37 (statutory undertakers), any person who is—

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

(b) the owner of a private sewer which communicated with that sewer,

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

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

(4) In this paragraph—

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

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

Use of subsoil and airspace within the Order limits

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

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

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

(a) any subway or underground building; or

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

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

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

PART 6

Miscellaneous and general

Application of landlord and tenant law

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

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

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

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Felling or lopping of trees and removal of hedgerows

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Crown rights

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

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

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

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

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

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

Protective provisions

43. Schedule 13 (protective provisions) has effect.

Operational land for the purposes of the 1990 Act

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

Certification of plans, etc.

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

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

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

(a) by post;

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

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

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (2) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

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

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

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

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

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

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

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

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

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

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

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

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

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

No double recovery

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

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

Arbitration

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

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

Temporary interference with river Dee and Public rights of navigation

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

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

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

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

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

(2) The power conferred by paragraph 49(1)(c) must be exercised in a way which secures—

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

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

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

Guarantees in respect of payment of compensation

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

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

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

(2) The provisions are—

(a) article 24 (compulsory acquisition of land);

(b) article 26 (compulsory acquisition of rights and restrictive covenants);

(c) article 29 (private rights);

(d) article 32 (acquisition of subsoil only);

(e) article 35 (temporary use of land for carrying out the authorised development);

(f) article 36 (temporary use of land for maintaining the authorised development); and

(g) article 37 (statutory undertakers).

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

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

Procedure in relation to certain approvals etc.

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

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

Procedure for habitat mitigation

52.—(1) Upon receipt of the SAC Management Contribution, Flintshire County Council shall use the SAC Management Contribution for the SAC Management Purpose and for no other purpose.

(2) Any Nitrogen Management Plan submitted by the undertaker for approval by Flintshire County Council pursuant to the first unilateral undertaking must be in general accordance with the requirements set out in Schedule 16 Part 3 of this Order.

(3) Flintshire County Council's approval of the Nitrogen Management Plan and any variations to the Nitrogen Management Plan pursuant to Schedule 16 Part 3 of this Order shall not be unreasonably withheld or delayed.

(4) Subject to paragraph (5), upon receipt by Flintshire County Council of the Saltmarsh Management Contribution, the Supplemental Saltmarsh Management Contribution, and any Saltmarsh Indexation Payment and approval of the Nitrogen Management Plan, Flintshire County Council shall use these contributions for the Saltmarsh Management Purpose and for no other purpose, unless otherwise agreed in writing by the Secretary of State.

(5) Flintshire County Council shall not be required to comply with paragraph (4) where, prior to the operation of Work No. 1(a) or (b):

(a) Flintshire County Council has approved the Nitrogen Management Plan;

(b) Flintshire County Council and the undertaker have entered into a Saltmarsh Management Area Lease;

(c) where the undertaker has paid the Saltmarsh Management Contribution or the Supplemental Saltmarsh Management Contribution or any Saltmarsh Indexation Payment, Flintshire County Council has repaid the same to the undertaker; and

(d) where the undertaker has not paid the Saltmarsh Management Contribution or the Supplemental Saltmarsh Management Contribution or any Saltmarsh Indexation Payment, Flintshire County Council has committed not to enforce payment of the same.

(6) Where paragraph (5) applies, the undertaker shall use the Saltmarsh Management Contribution, the Supplemental Saltmarsh Management Contribution and any Saltmarsh Indexation Payment for the Saltmarsh Management Purpose.

Signatory text

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

SCHEDULE 1

Article 2

Authorised development

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

Work No. 1

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

(a) up to two combined cycle gas turbine plants, each including—

(i) a combined cycle gas turbine;

(ii) a steam turbine with condenser;

(iii) gas and steam turbine buildings;

(iv) heat recovery steam generator;

(v) gas turbine air intake filters;

(vi) emissions stacks;

(vii) heat recovery steam generator stacks;

(viii) transformers;

(ix) auxiliaries building;

(x) deaerator and feed water pump house buildings;

(xi) nitrogen oxide emissions control equipment and selective catalytic reduction equipment and chemical storage;

(xii) chemical sampling / dosing plants;

(xiii) continuous emissions monitoring system; and

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

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

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

(ii) carbon dioxide absorber units and associated stacks;

(iii) carbon dioxide stripper and solvent regenerator;

(iv) continuous emissions monitoring system;

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

(vi) carbon dioxide conditioning and compression plant;

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

(i) mechanical draft cooling towers;

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

(ii) cooling water pumps, plant and buildings;

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

(iv) air cooling equipment;

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

(vi) modification of existing storage and settlement ponds;

(d) natural gas reception facility, including—

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

(ii) gas supply pipeline connection works;

(iii) gas receiving area;

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

(v) an above or below ground isolation valve;

(vi) gas vents;

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

(viii) telemetry equipment kiosks; and

(ix) standby generator sockets;

(e) a carbon dioxide interface facility, including—

(i) electrical transformer;

(ii) cathodic protection measures;

(iii) PIG launcher and receiver facilities;

(iv) isolation valves;

(v) connection points;

(vi) analyser house;

(vii) control mechanisms;

(viii) below ground pipework;

(ix) above ground control boxes; and

(x) below ground cables and cable ducts;

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

(i) administration and control buildings; and

(ii) workshop and stores buildings;

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

(h) demolition of the existing ENI AGI;

(i) ancillary works, including—

(i) acoustic fencing;

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

(iii) auxiliary boiler;

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

(v) chemical storage facilities;

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

(vii) potable water storage tank;

(viii) firefighting equipment, buildings and distribution pipework;

(ix) fire storage tanks;

(x) fire water retention basin;

(xi) gatehouses;

(xii) hardstanding;

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

(xiv) instrumentation and electrical kiosks;

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

(xvi) lighting;

(xvii) lubrication oils storage facilities;

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

(xix) pipework, pipe runs and pipe racks;

(xx) pumps;

(xxi) heat exchangers;

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

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

(xxiv) raw water storage tanks; and

(xxv) waste water treatment facilities.

Work No. 2

2. Infrastructure connection works, including—

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

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

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

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

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

(v) an above or below ground pressurisation bridle;

(vi) instrumentation and electrical kiosks;

(vii) gas metering equipment;

(viii) PIG receiving facility;

(ix) telemetry equipment kiosks and communications equipment;

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

(xi) natural gas compression equipment;

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

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

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

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

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

Work No. 3

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

(a) replacement of eel screens;

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

(c) creation of a pedestrian access route;

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

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

Work No. 4

4. Temporary construction and laydown areas, including—

(a) hard standing;

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

(c) earthworks and levelling;

(d) laydown and open storage areas;

(e) contractor compounds and construction staff welfare facilities;

(f) pedestrian routes;

(g) surface water drainage; and

(h) gatehouse and weighbridge.

Work No. 5

5. Construction of a surface water discharge outfall.

Work No. 6

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

Work No. 7

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

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

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

(c) installation of an underground telecommunications cable;

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

(e) landscaping, ecological and environmental works;

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

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

Work No. 8

8. Modification of an AGI at Flint, including—

(a) below ground pipework;

(b) an above ground connection point; and

(c) below ground cables and cable ducts.

Work No. 9

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

(a) office, welfare and security facilities;

(b) a parking area;

(c) plant and materials storage;

(d) waste processing and management areas; and

(e) fencing and gating.

Work No. 10

10. Works to provide site access including—

(a) creation of accesses from the highway;

(b) creation of visibility splays;

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

(d) highways improvements; and

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

Work No. 11

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

Work No. 12

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

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

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

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

(d) accommodation works to facilitate haulage route access.

Work No. 13

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

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

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

Site wide works

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

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

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

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

(d) hard standing and hard landscaping;

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

(f) biodiversity enhancement measures;

(g) works of restoration;

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

(i) external lighting, including lighting columns;

(j) gatehouses and weighbridges;

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

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

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

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

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

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

(q) generators;

(r) concrete batching facilities;

(s) offices and staff welfare facilities;

(t) wheel wash facilities;

(u) signage;

(v) vehicle parking and cycle storage facilities;

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

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

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

(z) remediation works;

(aa) demolition;

(bb) management and deposit of waste; and

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

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

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

SCHEDULE 2

Article 2

Requirements

PART 1

Requirements

Interpretation

1.—(1) In this Schedule—

"Airbus" means Airbus or any successor in function;

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

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

"CTMP" means construction traffic management plan;

"DEMP" means decommissioning environmental management plan;

"framework construction worker travel plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"framework site waste management plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"greenhouse gas reduction strategy" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

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

"lighting strategy" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"navigational risk assessment" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"off-site net benefit for biodiversity and green infrastructure strategy" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"operation and maintenance mitigation register" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"outline landscape and ecological management plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"outline surface water drainage strategy" means the document certified as such by the Secretary of State for the purposes of this Order under article 45 (certification of plans etc.);

"Overarching Written Scheme of Investigation for Terrestrial and Marine Heritage Mitigation" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"marine invasive non-native species outline management plan" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

"parameter plans" means the plans of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.);

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

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

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

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

Time limits

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

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

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

(b) if shorter, one year.

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

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

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

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

Detailed design

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

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

(b) finished floor levels;

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

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

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

(d) hard standing; and

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

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

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

Construction environmental management plan

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

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

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

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

(c) a construction drainage management strategy.

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

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

Construction traffic management plan

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

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

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

Surface water drainage

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

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

Construction surface and foul water drainage

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

(2) The details submitted pursuant to sub-paragraph (1) must include—

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

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

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

(4) In respect of each stage of the authorised development, details of the permanent foul water drainage systems, including a programme for their implementation, must be submitted to and approved by the relevant planning authority, in consultation with Natural Resources Wales, prior to the start of construction of the respective stage of those systems.

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

Flood risk mitigation

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

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

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

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

Archaeology

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

(2) No stage of the authorised development with the potential to affect buried archaeological assets may commence until a written scheme for the investigation of areas of archaeological

interest relevant to that stage (if any) as identified in the Overarching Written Scheme of Investigation for Terrestrial and Marine Heritage Mitigation has been submitted to and approved by the relevant planning authority following consultation with the Royal Commission on the Ancient and Historical Monuments of Wales and Heneb.

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

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

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

Landscape and ecological management plan

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

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

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

Curlew implementation and monitoring plan

11. Part 1 of Schedule 16 (Dee Estuary / Aber Dyfrdwy Special Protection Area / Ramsar site: delivery of measures in respect of functionally linked land) has effect.

Control of noise – operation

12.—(1) No stage of Work No. 1 may be brought into commercial use until a scheme for management and monitoring of noise during the operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must comply with the limits on noise from the operation of the authorised development contained within the design principles document.

(3) The scheme must be implemented as approved and maintained for the duration of the operation of the authorised development unless in an emergency or otherwise agreed with the relevant planning authority.

Operational and maintenance environmental management plan

13.—(1) The undertaker must, prior to operation of any stage of the authorised development, submit to the relevant planning authority for approval the operational and maintenance environment management plan (or plans) for that stage which details the monitoring and management requirements of the authorised development, including post-construction monitoring.

(2) The operational and maintenance environment management plan(s) submitted under sub-paragraph (1) must be in general accordance with the operation and maintenance mitigation register, and developed having regard to the approved LEMP(s) and the lighting strategy.

(3) Operation of each stage of the authorised development must be implemented in accordance with the approved operational and maintenance environment management plan(s) for that stage.

Aviation warning lighting

14.—(1) No stage of Work No. 1(a) or (b) may commence until details of the timetable for construction and retention of tall structures or the placement and retention of mobile cranes and the specification and installation timetable for aviation warning lighting for that stage during construction and operation have been submitted to and approved by the relevant planning authority following consultation with the Civil Aviation Authority and Airbus.

(2) The details submitted pursuant to sub-paragraph (1) must be in general accordance with the lighting strategy.

(3) Work No. 1(a) and (b) must be operated and maintained in accordance with the details approved pursuant to sub-paragraph (1).

Air safety

15.—(1) No stage of Work No. 1(a) or (b) may commence until details of the heights of structures and temporary cranes and other information that is required by Civil Aviation Authority and Airbus to chart the site for aviation purposes for that stage have been submitted to and approved by the relevant planning authority, following consultation with the Civil Aviation Authority and Airbus.

(2) The details submitted pursuant to sub-paragraph (1) must be in general accordance with the framework construction environmental management plan.

(3) The details approved pursuant to sub-paragraph (1) must thereafter be implemented, operated and maintained in accordance with the approved details.

Greenhouse gas reduction strategy

16. The construction, operation (including maintenance) and decommissioning of Work No. 1 must be undertaken in accordance with the objectives of the greenhouse gas reduction strategy, unless otherwise agreed with the relevant planning authority.

Decommissioning environmental management plan

17.—(1) Within 12 months of the date that the undertaker decides to decommission any stage of the authorised development, the undertaker must submit to the relevant planning authority a DEMP in relation to such stage for its approval.

(2) No decommissioning works for a particular stage may be carried out until the relevant planning authority has approved the DEMP for that stage.

(3) The DEMP must be implemented and maintained for the duration of the decommissioning of the relevant stage of the authorised development as approved unless otherwise agreed with the relevant planning authority.

Net benefit for biodiversity

18.—(1) The authorised development must not commence until a scheme securing the provision of net benefit for biodiversity for the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme to be approved pursuant to sub-paragraph (1) must be in general accordance with the outline landscape and ecological management plan and off-site net benefit for biodiversity and green infrastructure strategy.

(3) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved.

Abnormal indivisible loads

19.—(1) The transport of abnormal indivisible loads in connection with the construction of the authorised development must not commence until a detailed abnormal indivisible load risk

assessment and method statement have been submitted to and approved by the relevant planning authority in consultation with the highway authority.

(2) The transport of abnormal indivisible loads in connection with the construction of the authorised development must be carried out in accordance with the detailed abnormal indivisible load risk assessment and method statement as approved pursuant to sub-paragraph (1).

(3) If the undertaker determines that Connah's Quay North is to be used as a landside delivery point for the transport of abnormal indivisible loads to facilitate the construction of the authorised development, no transport of abnormal indivisible loads from Connah's Quay North may commence until an updated navigational risk assessment has been submitted to and approved by the relevant planning authority, in consultation with the Dee Conservancy.

(4) The updated navigational risk assessment approved pursuant to sub-paragraph (3) must be in general accordance with the navigational risk assessment, unless otherwise agreed with the relevant planning authority, in consultation with the Dee Conservancy.

Stages of authorised development

20.—(1) The authorised development may not commence until a written scheme setting out all stages of the authorised development has been submitted to the relevant planning authority.

(2) The written scheme submitted under sub-paragraph (1) may be amended by the undertaker.

(3) Where any amended written scheme is submitted under sub-paragraph (2), any prior submitted written scheme will be held to be superseded.

(4) Any amended written scheme must be submitted to the relevant planning authority before such amendment takes effect.

(5) The description of each stage in the written scheme submitted under sub-paragraph (1) or (4) must include details of the Work Nos. within that stage and a single Work No. can sit within a number of different stages.

(6) More than one stage may be planned to be undertaken concurrently.

(7) The authorised development must be implemented in accordance with the written scheme submitted under sub-paragraph (1) or (4).

Carbon dioxide capture, transfer and storage

21. Work No. 1(a) may not be brought into commercial use without Work Nos. 1(b), 1(c), 1(e), 7 and 8 also being brought into commercial use and Work Nos. 7 and 8 being connected to an operational storage site.

Saltmarsh Creation

22. Part 2 of Schedule 16 (Dee Estuary / Aber Dyfrdwy Special Area of Conservation/ Special Protection Area / Ramsar site: delivery of measures in respect of saltmarsh) has effect.

PART 2

Applications made under requirements

Written approval

23. Where under any of the requirements the approval or agreement of the discharging authority or another person or authority is required, that approval or agreement must be given in writing.

Amendments to approved details

24.—(1) With respect to the documents certified in accordance with article 45 (certification of plans, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the "Approved Documents, Plans, Details or Schemes"), the undertaker may submit to the discharging authority for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the discharging authority, the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the discharging authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Anticipatory steps towards compliance with any requirement

25. If, before the coming into force of this Order, the undertaker or any other person has taken any steps towards compliance with any provision of Part 1 (requirements) of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

Time period for approval

26.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval under a requirement, the discharging authority must use reasonable endeavours to give notice to the undertaker of its decision on the application within a period of 35 days and, in any case, must give notice to the undertaker of its decision on the application within a period of 56 days beginning with—

(a) where no further information is requested under paragraph 27, the day immediately following that on which the application is received by the authority;

(b) where further information is requested under paragraph 27, the day immediately following that on which further information has been supplied by the undertaker; or

(c) such longer period as may be agreed in writing by the undertaker and the discharging authority.

(2) In the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is taken to have granted all parts of the application (without any condition or qualification) at the end of that period unless otherwise agreed in writing.

Further information

27.—(1) Where an application has been made under paragraph 26 the discharging authority may, subject to complying with the requirements of this paragraph, request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(2) If the discharging authority considers that further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the discharging authority must, within 21 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the discharging authority must issue the consultation to the requirement consultee within 10 business days of receipt of the application, and must notify the undertaker in writing specifying any further information the discharging authority considers

necessary or that is requested by the requirement consultee within 10 business days of receipt of such a request and in any event within 20 business days of receipt of the application (or such other period as is agreed in writing between the undertaker and the discharging authority).

(4) If the discharging authority does not give the notification specified in sub-paragraphs (2) or (3) or such longer period as may be agreed in writing by the undertaker and the discharging authority, or otherwise fails to request any further information within the timescales provided for in this paragraph, it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 26.

Fees

28.—(1) Unless otherwise agreed with the discharging authority, where an application or a request for comments is made to the discharging authority for any consent, agreement or approval required by a requirement, a fee must be paid to the discharging authority as follows—

(a) such fee as may be prescribed (under sections 303 and 333(2A) of the 1990 Act for the discharge of conditions attached to a planning permission); or

(b) a fee of £242 per application or request.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 35 days of—

(a) the application or request being rejected as invalidly made; or

(b) the discharging authority failing to determine the application or to provide written comments within 56 days from the date on which the application is received, or such longer period as may be agreed in writing under paragraph 26, unless within that period the undertaker agrees in writing that the fee may be retained by the discharging authority and credited in respect of a future application or a future request for comments.

Appeals

29.—(1) Save where the discharging authority is the Secretary of State, the undertaker may appeal if—

(a) the discharging authority refuses an application for—

(i) any consent, agreement or approval required by a requirement or any document referred to in any requirement; or

(ii) any other consent, agreement or approval required under this Order, or grants it subject to conditions to which the undertaker objects;

(b) having received a request for further information under paragraph 27 the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

(c) having received any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The procedure for appeals is as follows—

(a) the undertaker must submit to the Secretary of State a copy of the application submitted to the discharging authority and any supporting documents which the undertaker may wish to provide ("the appeal documents");

(b) the undertaker must on the same day provide copies of the appeal documents to the discharging authority and the requirement consultee (if applicable);

(c) the Secretary of State must appoint a person to determine the appeal ("the appointed person") as soon as reasonably practicable after receiving the appeal documentation and

notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person must be sent;

(d) the discharging authority and the requirement consultee (if applicable) may submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the appeal parties may make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

Outcome of appeals

30.—(1) On an appeal under paragraph 29, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person under paragraph 29. Been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(3) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review within 6 weeks of the date of the appointed person's decision.

(4) Any consent, agreement or approval given by the appointed person pursuant to this Part of this Schedule is deemed to be an approval for the purpose of Part 1 of this Schedule 2 (requirements) as if it had been given by the discharging authority.

(5) The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(6) Except where a direction is given pursuant to sub-paragraph (7) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(7) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is made, the appointed person must have regard to the Planning

Practice Guidance: Appeals (April 2024) or any circular or guidance which may from time to time replace it.

Interpretation

31. In this Part of this Schedule—

"the appeal parties" means the discharging authority, the requirement consultee and the undertaker.

SCHEDULE 3

Article 9

Legislation to be disapplied

1.—(1) The following local enactments, orders and byelaws, and any byelaws or other provisions made under any of those enactments, orders or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

(a) Wrexham, Mold and Connah's Quay Railway (Extension) Act 1864(**a**);

(b) Wrexham, Mold and Connah's Quay Railway (Dee Valley Branch) Act 1865(**b**).

(c) Wrexham, Mold and Connah's Quay Railway (Extension) Act 1865(**c**);

(d) Wrexham, Mold and Connah's Quay Railway (Additional Powers) Act 1866(**d**);

(e) Wrexham, Mold and Connah's Quay Railway (Extension of Time) Act 1867(**e**);

(f) River Dee Company (Amendment) Act 1868(**f**);

(g) Wrexham, Mold and Connah's Quay Railway (Arrangement) Act 1869(**g**);

(h) Wrexham, Mold and Connah's Quay Railway Act 1873(**h**);

(i) Wrexham, Mold and Connah's Quay Railway Act 1882(**i**);

(j) Wrexham, Mold and Connah's Quay Railway Act 1883(**j**);

(k) Wrexham, Mold and Connah's Quay Railway (Capital Arrangements) Act 1883(**k**);

(l) Wrexham, Mold and Connah's Quay Railway Act 1888(**l**); and

(m) Dee and Clwyd River Authority Act 1973(**m**).

(**a**) 1864 c. ccxxxiv.
(**b**) 1865 c. clxxvi.
(**c**) 1865 c. cclxi.
(**d**) 1866 c. ccclviii.
(**e**) 1867 c. cc (Regnal. 30 and 31 Vict).
(**f**) 1868 c. xxv (Regnal. 31 and 32 Vict).
(**g**) 1869 c. cliii (Regnal. 32 and 33 Vict).
(**h**) 1873 c. ccxxxii.
(**i**) 1882 c. ccxxxii (Regnal. 45 and 46 Vict).
(**j**) 1883 c. lxv.
(**k**) 1883 c. cviii.
(**l**) 1888 c. lxxvii (Regnal. 51 and 52 Vict).
(**m**) 1973 c. xxix.

SCHEDULE 4

Article 12

Streets subject to street works and alteration of layout

PART 1

Streets subject to street works

(1) Area	*(2) Streets subject to street works*	*(3) Description of the street works*
Flintshire County Council	A548 (Rock Hill Junction to Ffynnongroyw Dual, Mostyn)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 01/01 and STR 01/02 on Sheet 1 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill Junction to Isglan Road, Mostyn)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 01/02 and STR 01/03 on Sheet 1 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill to Isglan Road, Mostyn)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 02/01 and STR 02/02 on Sheet 2 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill to Isglan Road, Mostyn)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 02/03 and STR 02/04 on Sheet 2 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill to Isglan Road, Mostyn)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 02/05 and STR 02/06 on Sheet 2 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Isglan Junction to B5121 Junction, Greenfield)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 03/01 and STR

		03/03 on Sheet 3 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Isglan Road	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching at point STR 03/02 on Sheet 3 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Bagillt Road Roundabout, Bagillt)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching at points STR 04/01, STR 04/02 and STR 04/03 on Sheet 4 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Manor Road Industrial Estate Entrance to Holywell Road, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/01 and STR 05/02 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Holywell Road, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/02 and STR 05/03 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Holywell Street, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/03 and STR 05/04 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Trelawny Square, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/04 and STR 05/05 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Chester Street, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/05 and STR 06/01 on Sheets 5 and 6 of the access, streets, rights of way

		and rights of navigation plans.
Flintshire County Council	Park Avenue, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/06 and STR 05/07 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Borough Grove, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/08 and STR 05/09 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Trelawny Avenue, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/10 and STR 05/11 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Woodfield Avenue, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 05/12 and STR 05/13 on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Chester Road, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 06/01 and 06/06 on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Queens Avenue, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 06/02 and STR 06/03 on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Kings Avenue, Flint	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 06/04 and STR 06/05 on Sheet 6 of the access, streets, rights of way and rights of navigation plans.

Flintshire County Council	A548 Chester Road, Oakenholt	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 06/06, STR 06/07 and STR 06/10 on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Leadbrook Drive	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 06/08 and STR 06/09 on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Allt-Goch Lane, Northop	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 07/01 and STR 07/02 on Sheet 7 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Chester Road Eastbound Carriageway, Oakenholt)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 08/01 and STR 08/06 on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Access into Connah's Quay Power Station off Kelsterton Road	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 08/02, STR 08/03 and STR 08/04 on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Kelsterton Road, Connah's Quay	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 08/04 and STR 08/05 on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road adjacent to North Road and River Road	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 09/01 and STR 09/02 on Sheet 9 of the access, streets, rights of way

		and rights of navigation plans.
Flintshire County Council	Private Road (North Road)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 09/02 and STR 09/05 on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (River Road)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 09/02 and STR 09/03 on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (Coatings Bypass Road)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching at point STR 09/04 on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (British Steel Road)	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 09/05 and STR 09/06 on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	British Steel Road, Sealand	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 09/06 and STR 10/06 on Sheets 9 and 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Phase 4 Roundbout DIP to B5129, Connah's Quay	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 10/01 and STR 10/02 on Sheet 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Phase 4 Roundabout DIP, Sealand	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 10/02, STR 10/03, STR 10/04 and STR 10/06 on Sheet 10 of the access, streets, rights of way and rights of

		navigation plans.
Flintshire County Council	A548 Weighbridge Road, Sealand	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching between points STR 10/04 and STR 10/05 on Sheet 10 of the access, streets, rights of way and rights of navigation plans.

PART 2

Streets subject to temporary alteration of layout

(1) Area	*(2) Streets subject to alteration of layout*	*(3) Description of alteration of layout*
Flintshire County Council	A548 (Rock Hill Junction to Ffynnongroyw Dual, Mostyn)	Alteration of layout of the A548 (Rock Hill Junction to Ffynnongroyw Dual, Mostyn) in the area depicted in solid green hatching at the points marked ALT 01/01 and ALT 01/02 as shown on Sheet 1 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the Authorised Development
Flintshire County Council	A548 (Bagillt Road Roundabout, Bagillt)	Alteration of layout of the A548 Bagillt Road Roundabout in the area depicted in solid green hatching at the points marked ALT 04/01, ALT 04/02 and ALT 04/03 as shown on Sheet 4 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development
Flintshire County Council	A548 Holywell Street, Flint	Alteration of layout of the A548 Holywell Street in the area depicted in solid green hatching between the points marked ALT 05/01 and ALT 05/02 as shown on Sheet 5 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development
Flintshire County Council	A548 Trelawny Square, Flint	Alteration of layout of the A548 Trelawny Square in the area depicted in solid green hatching between the points

		marked ALT 05/02 and ALT 05/03 as shown on Sheet 5 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development
Flintshire County Council	A548 Chester Road, Oakenholt	Alteration of layout of the A548 Chester Road in the area depicted in solid green hatching between the points marked ALT 06/01, ALT 06/02 and ALT 06/03 as shown on Sheet 6 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	A548 Chester Road Eastbound Carriageway, Oakenholt	Alteration of layout of A548 Chester Road Eastbound Carriageway in the area depicted in solid green hatching near between the points ALT 08/01 and ALT 08/04 as shown on Sheet 8 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Access into Connah's Quay Power Station off Kelsterton Road	Alteration of layout of Kelsterton Road and adjacent roundabout in the area depicted in solid green hatching near the points marked ALT 08/02 and ALT 08/03 as shown on Sheet 8 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Kelsterton Road	Alteration of layout of Kelsterton Road in the area depicted in solid green hatching at the point marked ALT 08/05 as shown on Sheet 8 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Private Road (North Road)	Alteration of layout of North Road, including the adjacent roundabout, in the area depicted in solid green

		hatching at the points marked ALT 09/01 and ALT 09/03 as shown on Sheet 9 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Private Road (Coatings Bypass Road)	Alteration of layout of Coatings Bypass Road in the area depicted in solid green hatching at the point marked ALT 09/02 as shown on Sheet 9 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Private Road (British Steel Road)	Alteration of layout of British Steel Road in the area depicted in solid green hatching between the points marked ALT 09/03 and ALT 09/04 shown on Sheet 10 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Phase 4 Roundabout DIP To B5129 Westbound, Connahs Quay	Alteration of layout of Phase 4 Roundabout Dip To B5129 Westbound in the area depicted in solid green hatching between the points marked ALT 10/01 and ALT 10/02 as shown on Sheet 10 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	Phase 4 Roundabout DIP, Sealand	Alteration of layout of Phase 4 Roundabout Dip in the area depicted in solid green hatching between the points marked ALT 10/02, ALT 10/03, ALT 10/04 and ALT 10/06 as shown on Sheet 10 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development.
Flintshire County Council	A548 Weighbridge Road, Sealand	Alteration of layout of the A548 Weighbridge Road in the area depicted in solid green hatching between the

	points marked ALT 10/04 and ALT 10/05 as shown on Sheet 10 of the access, streets, rights of way and rights of navigation plans to facilitate abnormal load navigation to the authorised development

PART 3

Streets subject to permanent alteration of layout

(1) Area	*(2) Streets subject to alteration of layout*	*(3) Description of alteration of layout*
Flintshire County Council	Allt-Goch Lane, Northop	Alteration of layout of Allt-Goch Lane in the area depicted in solid green hatching between the points ALT 07/01 and ALT 07/02, near the access marked 07/01 as shown on Sheet 7 of the access, streets, rights of way and rights of navigation plans subsequent to creation of new private means of access.

SCHEDULE 5

Article 15

Streets, public rights of way and rights of navigation to be restricted and stopped up

PART 1

Streets, public rights of way and rights of navigation to be temporarily stopped up

(1) Area	*(2) Street, public right of way or right of navigation*	*(3) Extent of stopping up*	*(4) Diversion route*
Flintshire County Council	404/66/20	Public right of way between points PRoW 07/02 and PRoW 07/03 as shown on Sheet 7 of the access, streets, rights of way and rights of navigation plans.	Diversion route between points PRoW 07/02 and PRoW 07/03 as shown on Sheet 7 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	River Dee	Public right of navigation between points NAV 09/01 and NAV 09/02 as shown on Sheet 9 of the access, streets, rights of way and rights of navigation	N/A

		plans.	
Flintshire County Council	River Dee	Public right of navigation between points NAV 09/03 and NAV 09/04 as shown on Sheet 9 of the access, streets, rights of way and rights of navigation plans.	N/A

PART 2

Streets, public rights of way and rights of navigation to be temporarily altered or managed

(1) Area	*(2) Street, public right of way or right of navigation*	*(3) Description of management*
Flintshire County Council	404/66/20	Public Right of Way between points PRoW 07/01 and PRoW 07/04 as shown on Sheet 7 of the access, streets, rights of way and rights of navigation plans to be temporarily managed and the allowance of temporary use of this Public Right of Way by motor vehicles.

PART 3

Streets, public rights of way and rights of navigation to be permanently stopped up

(1) Area	*(2) Street, public right of way or right of navigation*	*(3) Extent of stopping up*	*(4) Diversion route*
Flintshire County Council	Connah's Quay Power Station	The existing private street between points 08/04 and 08/05 as shown on Sheet 8 of the access, streets, rights of way and rights of navigation plans.	The length shown in yellow hatching between points CRS 08/01 and CRS 08/02 on Sheet 8 of the access, streets, rights of way and rights of navigation plans.

SCHEDULE 6

Article 16

Streets to be temporarily closed or restricted

(1) Area	*(2) Street*	*(3) Description of restriction*
Flintshire County Council	A548 (Rock Hill Junction to Ffynnongroyw Dual, Mostyn)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street

		works for the length coloured in green patterned hatching on Sheet 1 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill Junction to Isglan Road, Mostyn)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 1 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Rock Hill Junction to Isglan Road, Mostyn)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the lengths coloured in green patterned hatching on Sheet 2 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Isglan Junction to B5121 Junction, Greenfield)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 3 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Isglan Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 3 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Bagillt Road Roundabout, Bagillt)	Temporarily partial closure of the roundabout to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 4 of the access, streets, rights of way and rights of navigation plans.

Flintshire County Council	A548 Manor Road Industrial Estate Entrance to Holywell Road, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in solid green hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Holywell Road, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in solid green hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Holywell Street, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Trelawny Square, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Chester Street, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in solid patterned hatching on Sheet 5 and 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Park Avenue, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street

		works for the length coloured in green patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Borough Grove, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Trelawny Avenue, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Woodfield Avenue, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 5 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Chester Road, Flint	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Chester Road, Oakenholt	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	King’s Avenue, Flint	Temporarily partial closure to

		all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Queen's Avenue, Flint	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Leadbrook Drive	Temporarily partial closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 6 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Allt-Goch Lane	Temporarily partial lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 7 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 (Chester Road Eastbound Carriageway, Oakenholt)	Temporarily lane closures to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Access into Connah's Quay Power Station off Kelsterton Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street

		works for the length coloured in solid green or patterned hatching on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Kelsterton Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout for the length coloured in solid green hatching on Sheet 8 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road adjacent to North Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (North Road)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (Coatings Bypass Road)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Private Road (River Road)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheet 9 of the access, streets, rights of way and rights of navigation plans.

Flintshire County Council	Private Road (British Steel Road)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 9 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	British Steel Road, Sealand	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length coloured in green patterned hatching on Sheets 9 and 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Phase 4 Roundbout DIP to B5129, Connah's Quay	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Phase 4 Roundabout DIP, Sealand	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 10 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	A548 Weighbridge Road, Sealand	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 10 of the access, streets, rights of way and rights of navigation plans.

SCHEDULE 7

Article 17

New means of access

(1) Area	*(2) Street*	*(3) Description of relevant part of access*
Flintshire County Council	Proposed Access off Allt-Goch Lane	Proposed new access to be constructed at the point marked 07/01 on Sheet 7 of the access, streets, rights of way and rights of navigation plans. Access location co-ordinated in conjunction with the HyNet Order.
Flintshire County Council	Proposed Access off Allt-Goch Lane	Existing field access at the point marked 07/03 on Sheet 7 of the access, streets, rights of way and rights of navigation plans.
Flintshire County Council	Proposed Access off Allt-Goch Lane	Existing field access at the point marked 07/03 on Sheet 7 of the access, streets, rights of way and rights of navigation plans. Access location co-ordinated in conjunction with the HyNet Order.
Flintshire County Council	Proposed Access off Kelsterton Road, connecting to the A548 Eastbound carriageway.	Proposed new access to be constructed at the point marked 08/03 on Sheet 8 of the access, streets, rights of way and rights of navigation plans.

SCHEDULE 8

Article 20

Traffic regulation measures

(1) Area	*(2) Extent of temporary traffic signs and signals*
Flintshire County Council	Between the points marked TRM 01-01 and TRM 01-02 on sheet 1 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Ffynnongroyw Dual, Mostyn
Flintshire County Council	Between the points marked TRM 01-02 and TRM 01-03 on sheet 1 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Isglan Road, Mostyn
Flintshire County Council	Between the points marked TRM 02-01 and TRM 02-02 on sheet 2 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Isglan Road, Mostyn
Flintshire County Council	Between the points marked TRM 02-03 and TRM 02-04 on sheet 2 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Isglan Road, Mostyn
Flintshire County Council	Between the points marked TRM 02-05 and

	TRM 02-06 on sheet 2 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Isglan Road, Mostyn
Flintshire County Council	Between the points marked TRM 03-01 and TRM 03-02 on sheet 3 of the Traffic Regulation Measures Plans on the A548 Rock Hill Junction to Isglan Road, Mostyn
Flintshire County Council	Between the points marked TRM 03-02 and TRM 03-03 on sheet 3 of the Traffic Regulation Measures Plans on the A548 Isglan Junction to B5121 Junction, Greenfield (Mostyn Road)
Flintshire County Council	Between the points marked TRM 04-01 and TRM 04-02 on sheet 4 of the Traffic Regulation Measures Plans on the A548 Bagillt Road Roundabout, Bagillt
Flintshire County Council	Between the points marked TRM 05-01 and TRM 05-02 on sheet 5 of the Traffic Regulation Measures Plans on the A548 Manor Road Industrial Estate Entrance to Holywell Road, Flint
Flintshire County Council	Between the points marked TRM 05-02 and TRM 05-03 on sheet 5 of the Traffic Regulation Measures Plans on the A548 Holywell Road, Flint
Flintshire County Council	Between the points marked TRM 05-03 and TRM 05-04 on sheet 5 of the Traffic Regulation Measures Plans on the A548 Holywell Street, Flint
Flintshire County Council	Between the points marked TRM 05-04 and TRM 05-05 on sheet 5 of the Traffic Regulation Measures Plans on the A548 Trelawny Square, Flint
Flintshire County Council	Between the points marked TRM 05-05 on sheet 5 and TRM 06-01 on sheet 6 of the Traffic Regulation Measures Plans on the A548 Chester Street, Flint
Flintshire County Council	Between the points marked TRM 06-01 and TRM 06-02 on sheet 6 of the Traffic Regulation Measures Plans on the A548 Chester Street, Flint
Flintshire County Council	Between the points marked TRM 06-02 and TRM 06-03 on sheet 6 of the Traffic Regulation Measures Plans on the A548 Chester Road, Oakenholt
Flintshire County Council	Between the points marked TRM 07-01 and TRM 07-02 on sheet 7 of the Traffic Regulation Measures Plans on the Allt Goch Lane, Northop
Flintshire County Council	Between the points marked TRM 08-01 and TRM 08-02 on sheet 8 of the Traffic Regulation Measures Plans on the A548 Chester Road, Oakenholt
Flintshire County Council	Between the points marked TRM 08-03 and TRM 08-04 on sheet 8 of the Traffic Regulation Measures Plans on the Kelsterton

	Road, Connah's Quay
Flintshire County Council	Between the points marked TRM 09-01 and TRM 09-02 on sheet 9 of the Traffic Regulation Measures Plans on the Private Road (British Steel Road)
Flintshire County Council	Between the points marked TRM 09-02 and TRM 09-03 on sheet 9 of the Traffic Regulation Measures Plans on the Private Road (North Road)
Flintshire County Council	Between the points marked TRM 09-03 and TRM 09-04 on sheet 9 of the Traffic Regulation Measures Plans on the Private Road (River Road)
Flintshire County Council	Between the points marked TRM 10-01 and TRM 10-02 on sheet 10 of the Traffic Regulation Measures Plans on the A548 Phase 4 Roundbout DIP to B1529, Connah's Quay
Flintshire County Council	Between the points marked TRM 10-02 and TRM 10-03 on sheet 10 of the Traffic Measures Plans on the A548 Phase 4 Roundabout DIP, Sealand
Flintshire County Council	Between the points marked TRM 10-03 and TRM 10-04 on sheet 10 of the Traffic Regulation Measures Plans on the A548 Weighbridge Road, Sealand
Flintshire County Council	Between the points TRM 09-01 on sheet 9 and TRM 10-05 on sheet 10 of the Traffic Regulation Measures Plans on the British Steel Road, Sealand

SCHEDULE 9

Article 26

Land in which only new rights etc., may be acquired

(1) Area	*(2) Number of plot shown on land plans*	*(3) Purpose for which rights may be acquired*
Flintshire County Council	8/5, 8/16, 9/7, 9/12	To construct, operate, maintain and use Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	8/6	To construct, operate, maintain and use Work No. 2 and Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in

		Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	8/13, 8/15	To construct, operate, maintain and use Work Nos. 1, 2, 4 and 10 and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	8/17, 8/18	To construct, operate, maintain and use Work No. 3 and Work No. 6, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	8/19, 9/1, 9/2, 9/3, 9/5, 9/8, 9/9, 9/10, 9/13, 9/15, 9/16, 9/18, 9/19, 9/20, 9/21, 9/22	To construct, operate, maintain and use Work No. 3, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	9/4, 9/6, 9/11	To facilitate access to the authorised development as set out in Schedule 1 (authorised development).
Flintshire County Council	9/14	To construct, operate, maintain and use Work No. 6, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
Flintshire County Council	9/17	To construct, operate, maintain and use Work No. 4 and Work No. 10, and to construct, operate, maintain, use, inspect and alter any

protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.

SCHEDULE 10

Article 26

Modification of compensation and compulsory purchase enactments for creation of new rights

Compensation enactments

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

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

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

"(5A) If—

(i) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 5(5) of Schedule 10 to The Connah's Quay Low Carbon Power Order 202*);

(ii) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 4(8) of Schedule 10 to The Connah's Quay Low Carbon Power Order 202*) to acquire an interest in the land; and

(iii) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of sub-section (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right."

3.—(1) Without limitation on the scope of paragraph (1), the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3) of this Schedule—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

(**a**) 1973 c. 26.

Application of Part 1 of the 1965 Act

4.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 34 (modification of Part 1 of the 1965 Act) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 26 (compulsory acquisition of rights and restrictive covenants)—

(a) with the modifications specified in paragraph 5; and

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

5.—(1) The modifications referred to in paragraph 4(1)(a) are set out in sub-paragraph (2).

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

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

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

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by sub-section (1) of that section (as it applies to a compulsory acquisition), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(**a**) (powers of entry: further notices of entry), 11B(**b**) (counter-notice requiring possession to be taken on specified date), 12(**c**) (unauthorised entry) and 13(**d**) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(**a**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
(**b**) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.
(**c**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016.
(**d**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15)

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 33(4) (modification of Part 1 of the 1965 Act) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

"SCHEDULE 2A Section 8

Counter-notice requiring purchase of land not in notice to treat

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act) of The Connah's Quay Low Carbon Power Order 202* in respect of the land to which the notice to treat relates.

(2) But see article 32 (acquisition of subsoil only) of The Connah's Quay Low Carbon Power Order 202* which excludes the acquisition of subsoil only from this Schedule.

(3) In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

(a) withdraw the notice to treat;

(b) accept the counter-notice; or

(c) refer the counter-notice to the Upper Tribunal.

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

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

(**a**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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

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

Determination by the Upper Tribunal

9. On a referral under paragraph 6, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

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

(a) the effect of the acquisition of the right or the imposition of the covenant;

(b) the use to be made of the right or covenant proposed to be acquired or imposed; and

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

11. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 9, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

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

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

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

14. Any dispute as to the compensation is to be determined by the Upper Tribunal."

Application of the 2017 Regulations

6. References to land in the Schedule to the 2017 Regulations are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed (including for the benefit of a statutory undertaker); or

(b) the land over which the right is to be exercisable, or the restrictive covenant is or is to be enforceable.

SCHEDULE 11

Article 35

Land of which only temporary possession may be taken

(1) Area	*(2) Number of plot shown on land plans*	*(3) Purpose for which temporary possession may be taken*
Flintshire County Council	1/1, 1/2, 1/3, 1/4, 1/5, 1/6, 1/7, 1/8, 1/9, 2/1, 2/2, 2/3, 3/1, 4/1, 4/2, 4/3, 4/4, 5/1, 5/2, 5/3, 5/4, 5/5, 5/6, 5/7, 5/8, 5/9, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/16, 5/17, 6/1, 6/2, 6/3, 8/3, 8/7, 8/8, 8/9, 8/14	Temporary use to facilitate the carrying out of Work No. 11 and further associated development.
Flintshire County Council	7/1	Temporary use to facilitate the carrying out of Work No. 10 and further associated development.
Flintshire County Council	8/4	Temporary use to facilitate the carrying out of Work No. 10 and Work No. 11 and further associated development.
Flintshire County Council	9/24, 9/25, 9/26, 9/27, 9/28, 9/29, 9/30, 9/31, 10/1, 10/2	Temporary use to facilitate the carrying out of Work No. 12 and further associated development.
Flintshire County Council	1/1, 1/2, 1/3, 1/4, 1/5, 1/6, 1/7, 1/8, 1/9, 2/1, 2/2, 2/3, 3/1, 4/1, 4/2, 4/3, 4/4, 5/1, 5/2, 5/3, 5/4, 5/5, 5/6, 5/7, 5/8, 5/9, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/16, 5/17, 6/1, 6/2, 6/3, 8/3, 8/7, 8/8, 8/9, 8/14	Temporary use to facilitate the carrying out of Work No. 11 and further associated development.

SCHEDULE 12

Article 41

Removal of hedgerows

(1) Location of hedgerow	*(2) Relevant part of the authorised development*	*(3) Important hedgerow*
Hedgerow 19 as shown on sheet 7 of the hedgerow removal plan with grid reference SJ 25177 70849.	Work Nos. 7, 8 and 9.	No
Hedgerow 33 as shown on sheet 8 of the hedgerow removal plan with grid reference SJ 27549 71083.	Work No. 1.	No

SCHEDULE 13

Article 43

Protective provisions

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the affected undertakers referred to in this Part of this Schedule (save for any affected undertakers which are specifically protected by any other Part of this Schedule, which will take precedence) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

Interpretation

2. In this Part of this Schedule—

"affected undertaker" means—

(a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;

(b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(**a**);

(c) a water undertaker within the meaning of the Water Industry Act 1991(**b**); or

(d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified in Parts 2 to 9 of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

"alternative apparatus" means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991;

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an

(**a**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000 (c. 27).
(**b**) 1991 c. 56.

agreement to adopt made under section 104 (Agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties; and

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in temporarily closed streets

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by articles 15 (stopping up of streets, public rights of way and rights of navigation)) or 16 (temporary restriction of use of streets), a affected undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the affected undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a affected undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the affected undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours

to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

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

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

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

Retained apparatus

8.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 6(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(1), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

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

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(1).

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

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

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(1).

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

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 6(1) any damage is caused to any

apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and

(b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

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

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

Enactments and agreements

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

13. In this Part of this Schedule—

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

(1) "the code rights" has the same meaning as in the Paragraph 3 of the electronic communications code(**b**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide.

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

(**a**) 2003 c. 21.
(**b**) See section 106 of the 2003 Act. Section 106 was amended by section 4(3) of the Digital Economy Act 2017 (c. 30).

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

14. The exercise of the powers conferred by this Order is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

15.—(1) Subject to sub-paragraph (2), if as a result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

16. The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

17. Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 48 (arbitration).

18. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

19. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NETWORK RAIL

20. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 35 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

21. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form reasonably prescribed from time to time by Network Rail;

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

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

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

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

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

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

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

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

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

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

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

(a) article 3 (development consent etc. granted by the Order);

(b) article 5 (power to maintain the authorised development);

(c) article 23 (authority to survey and investigate the land);

(d) article 24 (compulsory acquisition of land);

(e) article 26 (compulsory acquisition of rights and restrictive covenants);

(f) article 32 (acquisition of subsoil only);

(g) article 27 (statutory authority to override easements and other rights);

(h) article 35 (temporary use of land for carrying out the authorised development);

(i) article 36 (temporary use of land for maintaining the authorised development);

(j) article 37 (statutory undertakers);

(k) article 29 (private rights);

(l) article 41 (felling or lopping of trees and removal of hedgerows);

(m) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

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

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 37 (statutory undertakers), article 27 (statutory authority to override easements and other rights) or article 29 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail (such consent not to be unreasonably withheld).

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

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) Where Network Rail is asked to give its consent pursuant to this paragraph and by the end of the period of 28 days beginning with the date on which such request for Network Rail's consent was made Network Rail has not intimated their refusal together with the grounds of any such refusal of such consent the undertaker may serve upon Network Rail written notice requiring Network Rail to intimate approval or disapproval within a further period of 28 days beginning with the date upon which Network Rail receives written notice from the undertaker. If by the expiry of the further 28 days Network Rail has not intimated consent or refusal of consent, Network Rail is deemed to have given consent for the exercise of the respective powers.

(8) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

24.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 48 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the

grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

25.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 24(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 24;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is reasonably practicable to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

26. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

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

28.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 24(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 30(1) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

29. The undertaker must repay to Network Rail all reasonable and proper fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 24(2) or in constructing any protective works under the provisions of paragraph 24(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works (if any);

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

30.—(1) In this paragraph—

(a) "EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

(b) "Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 24(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the specified works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 24(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 24(1) has effect subject to the sub-paragraph.

(6) Prior to the specified works being brought into commercial use the undertaker shall test the use of the use of the specified works in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

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

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 25.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 34(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 30(1) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 48 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

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

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

33. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail within 30 days of the receipt of a VAT invoice.

34.—(1) The undertaker must pay to Network Rail all reasonable and properly incurred costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 47 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be

followed or consents obtained to facilitate the carrying out or operation of the authorised development;

(f) and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (unless it was done with negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) The indemnity in sub-paragraph (1) shall be limited to a maximum aggregate liability of £50,000,000 (fifty-five million pounds sterling).

(3) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands;

(b) not make any settlement or compromise of such a claim or demand without the prior written consent of the undertaker;

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands; and

(d) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in sub-paragraph (1).

(4) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under that sub-paragraph shall, if relevant, include a sum equivalent to the relevant costs in circumstances where Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator, and Network Rail shall use reasonable endeavours in advance of any such liability occurring to assist the undertaker in obtaining copies of any agreements with train operators which may be relevant the purposes of sub-paragraph (1) and identifying the basis of calculation of such relevant costs.

(5) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Network Rail, its officers, servants, contractors or agents.

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

(7) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (5) which relates to the relevant costs of that train operator.

(8) The obligation under sub-paragraph (5) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (6).

(9) In this paragraph—

(a) "the relevant costs" means the direct costs, losses and expenses (including loss of revenue) reasonably and properly incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

(b) "train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

35. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 34) and with such information

as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

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

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

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

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

39. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

40. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

41. Any difference or dispute arising between the undertaker and Network Rail under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Network Rail, determined by arbitration in accordance with article 48 (arbitration).

PART 4

FOR THE PROTECTION OF THE DEE CONSERVANCY

42. For the protection of the Dee Conservancy, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the Dee Conservancy.

43. For the purposes of this Part of this Schedule, "Dee Conservancy" has the same meaning as in Article 2(1) (interpretation).

Public rights of navigation

44.—(1) The undertaker must serve notice on the Dee Conservancy not later than 28 days prior to the proposed commencement date of any suspension of public rights of navigation pursuant to article 49 (temporary interference with river Dee and Public rights of navigation).

(2) Any such notice must provide details of the suspension including particulars of—

(a) commencement date;

(b) duration; and

(c) the affected area.

(3) Any suspension of the public rights of navigation under article 49(1)(c) (temporary interference with river Dee and Public rights of navigation) shall not take place except in accordance with approval in writing by the Dee Conservancy and any conditions imposed by the Dee Conservancy under this paragraph or determined under paragraph 47 (disputes).

(4) The Dee Conservancy may in relation to any notice impose reasonable conditions for any purpose described in sub-paragraph (5).

(5) Conditions imposed under sub-paragraph (4) may include conditions as to—

(a) the limits of any area subject to a temporary suspension of public rights of navigation;

(b) the duration of any temporary suspension;

(c) the means of marking or otherwise providing warning in the river Dee of any area affected by a temporary suspension of public rights of navigation; and

(d) the use by the undertaker of the area subject to any temporary suspension so as not to interfere with any other part of the river Dee or affect its use.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but, in that case, it must give to the Dee Conservancy notice as soon as is reasonably practicable and the details required under sub-paragraph (2) as soon as reasonably practicable subsequently and must comply with the remainder of this paragraph in so far as is reasonably practicable in the circumstances.

Facilities for navigation

45.—(1) The undertaker must not in the exercise of the powers granted by this order interfere with any marks, lights or other navigational aids in the river Dee without the agreement of the Dee Conservancy, and must ensure that access to such aids remains available during and following construction of any specified works.

Costs and exercise of DCO powers and compensation

46.—(1) The undertaker shall be responsible for and make good to the Dee Conservancy all financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Dee Conservancy by reason of anything done in relation to a mooring or buoy pursuant to paragraph 45 (facilities for navigation); or

(2) The fact that any act or thing may have been done—

(a) by the Dee Conservancy on behalf of the undertaker; or

(b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Dee Conservancy, or in a manner approved by the Dee Conservancy, or under its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the Dee Conservancy or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(3) The Dee Conservancy must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand shall be made without the prior consent of the undertaker.

Disputes

47. Any dispute arising between the undertaker and the Dee Conservancy under this Part of this Schedule shall be determined by arbitration in accordance with article 48 (arbitration) unless otherwise agreed in writing by the undertaker and the Dee Conservancy.

PART 5

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

48.—(1) For the protection of National Grid Electricity Transmission Plc as referred to in this Part of this Schedule the following provisions have effect, unless National Grid Electricity Transmission Plc is acting with the benefit of the Order or as otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid Electricity Transmission Plc and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid Electricity Transmission Plc on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Electricity Transmission Plc (but without prejudice to paragraph 57(3)(b).

Interpretation

49. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by or on behalf of the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc; and

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either:

(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million

pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article (1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"commence" and "commencement" in this Part of this Schedule shall, to the extent that at the relevant time there is subterranean apparatus, include any below ground surveys and associated monitoring, ground work operations or erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid Electricity Transmission Plc's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"Incentive Deduction" means any incentive deduction National Grid Electricity Transmission Plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the specified works;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Electricity Transmission Plc: construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid Electricity Transmission Plc" means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"NGESO" means as defined in the STC;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 53(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 53(2) (removal of apparatus) or otherwise; and

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity transmission owner and NGESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission Plc's transmission system which arises as a result of the specified works; and

"transmission owner" means as defined in the STC.

On Street Apparatus

50. Except for paragraphs 51 (apparatus of National Grid Electricity Transmission Plc in stopped up streets), 55 (retained apparatus: protection), 56 (expenses) and 57 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid Electricity Transmission Plc in stopped up streets

51.—(1) Where any street is stopped up under article 15 (stopping up of streets, public rights of way and rights of navigation), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity Transmission Plc in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid Electricity Transmission Plc to require the removal of that apparatus under paragraph 53 (removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 55 (retained apparatus: protection).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (stopping up of streets, public rights of way and rights of navigation), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

52.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus of National Grid Electricity Transmission Plc or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid Electricity Transmission Plc, otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the specified works (or in such other timeframe as may be agreed between National Grid Electricity Transmission Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such specified works.

(3) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker, the undertaker and National Grid Electricity Transmission Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 55 (retained apparatus: protection) or any other paragraph of this Part of this Schedule shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

53.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3) secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction (taking into account paragraph 54(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Electricity Transmission Plc and the undertaker.

(5) National Grid Electricity Transmission Plc must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

54.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid Electricity Transmission Plc and must be no less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid Electricity Transmission Plc under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 61 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

55.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.

(2) In relation to specified works which will or may involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) In relation to any specified works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of the trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (7) or (9); and

(b) must not be unreasonably withheld or delayed.

(6) If, after the expiry of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Grid Electricity Transmission Plc, this would constitute unreasonably withholding approval.

(7) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus and National Grid Electricity Transmission Plc must notify the undertaker of such modifications within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (7), as approved or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (7) or (9) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

(9) Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid Electricity Transmission Plc's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(10) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (7) or (9) and in consequence of the works proposed by the undertaker reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 48 to 50 and 52 to 53(2) (removal of apparatus) apply as if the removal of the apparatus had been required by the undertaker under paragraph 53(2).

(11) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(12) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any specified works authorised under this Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

56.(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which is required in consequence of the execution of any specified works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works , plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 61 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

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

(6) Any amount paid to National Grid Electricity Transmission Plc under sub-paragraph (1) which relates to charges, costs and expenses which were reasonably anticipated within the following three month period by National Grid Electricity Transmission Plc but which were not then actually incurred must be returned to the undertaker as soon as reasonably practicable following the relevant three month period.

Indemnity

57.—(1) Subject to sub-paragraphs (2) to (7), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works,

any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the specified works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay within 30 days of receipt of an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and

(b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid Electricity Transmission Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc, its officers, servants, contractors or agents;

(b) any specified works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as the undertaker, as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or articles 7 (benefit of the Order) or 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any specified works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 57; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) National Grid Electricity Transmission Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid Electricity Transmission Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid Electricity Transmission Plc's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid Electricity Transmission Plc's control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant.

(7) The indemnity in sub-paragraph (1) shall be limited to a maximum aggregate liability of £50,000,000 (fifty million pounds sterling).

(8) The undertaker must not commence construction (and not permit the commencement of such construction) of the specified works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied:

(a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the specified works from the proposed date of commencement of construction of the specified works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the specified works from the proposed date of commencement of construction of the specified works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(9) In the event that the undertaker fails to comply with 57(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

58. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

59.—(1) Where in consequence of the proposed construction of any part of the specified works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 53(2) (removal of apparatus) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 55 (retained apparatus: protection), the undertaker shall use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the specified works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc shall use best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

60. If in consequence of the agreement reached in accordance with paragraph 52(1) (acquisition of land) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

61. Save for differences or disputes arising under paragraph 53(2) or 53(3), any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 48 (arbitration).

Notices

62. Notwithstanding article 46 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 55 (retained apparatus: protection) must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF GTC INFRASTRUCTURE LIMITED

Application

63. For the protection of GTC the following provisions have effect, unless otherwise agreed in writing between the undertaker and GTC.

Interpretation

64. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable GTC to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means either—

(a) any mains, pipes or other apparatus belonging to or maintained by GPL for the purposes of gas supply; or

(b) electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by ENC and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"ENC" means The Electricity Network Company Limited, a company registered with company number 05581824 and whose registered office address is at Synergy House Woolpit Business Park, Woolpit, Bury St Edmunds, Suffolk, England, IP30 9UP;

"functions" includes powers and duties;

"GTC" means either—

(a) GPL; or

(b) ENC;

"GPL" means GTC Pipelines Limited, a company registered with company number 03104203 and whose registered office address is at Synergy House Woolpit Business Park, Woolpit, Bury St Edmunds, Suffolk, England, IP30 9UP; and

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in the streets

65. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and GTC are regulated by the provisions of the 1991 Act.

Apparatus in temporarily closed streets

66. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by articles 15 (stopping up of streets, public rights of way and rights of navigation)) or 16 (temporary restriction of use of streets), GTC is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to inspect, maintain and operate any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

67.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

(2) The undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right of apparatus held by GTC otherwise than by agreement.

Removal of apparatus

68.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires GTC's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of GTC to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction, as provided in writing, of GTC in accordance with sub- paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to GTC 42 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order GTC reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to GTC the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, GTC must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between GTC and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) GTC must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48 (arbitration) and after the grant to GTC of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

69.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to GTC facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and GTC or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) Unless otherwise agreed with GTC, the facilities and rights granted pursuant to sub-paragraph (1) must be no less favourable on the whole to GTC than the facilities and rights enjoyed by it in respect of the apparatus to be removed.

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

Retained apparatus

70.—(1) Not less than 42 days before starting the execution of any works of the type referred to in paragraph 68(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 68(1), the undertaker must submit to GTC a plan, section and description of the works to be executed together with an assessment of the impact of the works upon the apparatus of GTC and the measures proposed to protect the apparatus of GTC in accordance with the relevant applicable code of practice and standards.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by GTC for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and GTC is entitled to watch and inspect the execution of those works.

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

(4) If GTC in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 68(1).

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

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

Access

71. If in consequence of the agreement reached in accordance with paragraph 68 or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by GTC in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to

such apparatus as will enable GTC to maintain or use the apparatus no less effectively than was possible before such obstruction.

Expenses and costs

72.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to GTC within 30 days of receipt of an invoice or a cost schedule all charges, costs and expenses reasonably incurred by GTC in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works and any compensation properly paid by GTC in connection with the obtainment of any necessary facilities and rights in other land in which the alternative apparatus is to be constructed in accordance with paragraph 68(1).

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

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to GTC by virtue of sub-paragraph (1) and/or (2) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to GTC in respect of works by virtue of sub-paragraph (1) and/or (2) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on GTC any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

73.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 68(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of GTC, or there is any interruption in any service provided, or in the supply of any goods, by GTC, the undertaker must—

(a) bear and pay the cost reasonably incurred by GTC in making good such damage or restoring the supply; and

(b) provide reasonable compensation to GTC for any other expenses, loss, damages, penalty or costs incurred by GTC,

by reason or in consequence of any such damage or interruption.

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

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

Enactments and agreements

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

PART 7

FOR THE PROTECTION OF SP MANWEB AS ELECTRICITY UNDERTAKER

Application

75. The following provisions have effect for the protection of SP Manweb unless otherwise agreed in writing between the undertaker and SP Manweb.

Interpretation

76. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to enable SP Manweb to fulfil its statutory functions in a manner no less efficient than previously (to the reasonable satisfaction of SP Manweb);

"apparatus" means electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by SP Manweb together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SP Manweb for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as is given to the term "authorised development" in article 1 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Part of this Schedule;

"commence" has the same meaning as in article 2 of this Order and commencement must be construed to have the same meaning;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SP Manweb including use, repair, alter, inspect, renew or remove the apparatus;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"SP Manweb" means SP Manweb PLC (Company No. 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET or any successor in statutory function;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which—

(a) will or may be situated under, over or within 15 metres (measured in any direction) of any apparatus the removal of which has not been required by the undertaker under paragraph 79(2) or otherwise;

(b) is reasonably likely to adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 79(2) or otherwise; and/or

(c) include any of the activities that are referred to in SP Manweb's polices for development near overhead lines EN43-8 "Electrical Networks Association Technical Standards" and HSE's guidance note GS 6 "Avoidance of Danger from Overhead Lines" and guidance note HSG 47 "Avoiding Danger from Underground Services".

On Street Apparatus

77. Except for paragraphs 81, 82 and 83 of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SP Manweb, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SP Manweb are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

78.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest of SP Manweb or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus of SP Manweb otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between SP Manweb and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SP Manweb and/or affects the provisions of any enactment or agreement regulating the relations between SP Manweb and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SP Manweb reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between SP Manweb and the undertaker acting reasonably and which must be no less favourable on the whole to SP Manweb unless otherwise agreed by SP Manweb, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(4) No agreement or consent granted by SP Manweb under any other paragraph of this Part of this Schedule constitutes agreement under sub-paragraph (1).

Removal of apparatus

79.—(1) If, in the exercise of the agreement reached in accordance with paragraph 78 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of SP Manweb to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of SP Manweb in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any specified works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SP Manweb at least 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SP Manweb reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to SP Manweb to its satisfaction (taking into account paragraph 80(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the use and maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SP Manweb must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between SP Manweb and the undertaker.

(5) SP Manweb must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SP Manweb of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

Facilities and rights for alternative apparatus

80.—(1) Subject to sub-paragraph (2), where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SP Manweb facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SP Manweb and must be no less favourable on the whole to SP Manweb than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by SP Manweb.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SP Manweb under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SP Manweb than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter

will be referred to arbitration in accordance with paragraph 87 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SP Manweb as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 48 (arbitration) applies.

Retained apparatus: Protection of SP Manweb as Electricity Undertaker

81.—(1) Not less than 56 days before the commencement of any specified works the removal of which has not been required by the undertaker under paragraph 79(2), the undertaker must submit to SP Manweb a plan of the works to be executed and seek from SP Manweb details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15m of any apparatus, the plan to be submitted to SP Manweb under sub-paragraph (1) must include a method statement which shows and describes—

(a) the exact position of the specified works;

(b) the level at which the specified works are proposed to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) In relation to any specified works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity support or 15 metres for 132kV apparatus or between any two or more adjacent electricity supports which are within the Order limits or within 10 metres of the Order limits, the plan to be submitted under sub-paragraph (1) must include a method statement which, in addition to the matters set out in sub-paragraph (2), must—

(a) describe details of any cable trench design including route, dimensions, clearance to support foundations;

(b) demonstrate that support foundations will not be affected prior to, during and post construction;

(c) describe load bearing capacities of trench supporting structures;

(d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) provide a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) provide an assessment of earth rise potential if reasonably required by SP Manweb's engineers; and

(h) provide evidence that trench collapse resistance and supporting structures bearing capacity are to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) applies until SP Manweb has given written approval of the plan so submitted provided that SP Manweb must not unreasonably delay notification of its approval or disapproval.

(5) Any approval of SP Manweb required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (7) or (9); and

(b) must not be unreasonably withheld or delayed.

(6) If after the expiry of 56 days SP Manweb has not communicated approval or disapproval, SP Manweb is deemed to have approved the plans as supplied.

(7) In relation to any work requiring the submission of a plan under sub-paragraph (1), SP Manweb may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus and SP Manweb must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to SP Manweb.

(8) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and SP Manweb and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) or (9) by SP Manweb for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SP Manweb will be entitled to watch and inspect the execution of those works.

(9) Where SP Manweb reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SP Manweb's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and SP Manweb must give 56 days' notice of such works from the date of submission of a plan pursuant to sub-paragraph (1) (except in an emergency).

(10) If SP Manweb in accordance with sub-paragraphs (7) or (9) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 79(2) applies as if the removal of the apparatus had been required by the undertaker.

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

(12) The undertaker must not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the SP Manweb notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any specified works authorised under the Order, the undertaker must comply with statutory requirements and guidelines for development near overhead lines EN43-8 "Electrical Networks Association Technical Standards" and HSE's guidance note GS 6 "Avoidance of Danger from Overhead Lines" in relation to any apparatus and aligning with SP Manweb guidelines.

Expenses

82.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SP Manweb within 30 days of receipt of an invoice all reasonable charges, costs and expenses reasonably incurred by SP Manweb in direct consequence of the execution of any authorised development including without limitation in respect of—

(a) any costs reasonably incurred by or compensation properly paid by SP Manweb in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by SP Manweb as a consequence of SP Manweb—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 79(3); and/or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SP Manweb;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works under paragraph 81(9) (including any temporary protective works and their removal); and / or

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SP Manweb by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

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

Indemnity

83.—(1) Subject to sub-paragraphs (2) to (5), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of SP Manweb, or if there is any interruption in any service

provided, or in the supply of any goods by SP Manweb, or SP Manweb becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay within 30 days of an invoice or claim from SP Manweb the cost reasonably and properly incurred by SP Manweb in making good such damage or restoring the supply; and

(b) indemnify SP Manweb for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from SP Manweb, by reason or in consequence of any such damage or interruption or SP Manweb becoming liable to any third party as aforesaid other than arising from any default of SP Manweb,

provided that at all times SP Manweb will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by SP Manweb on behalf of the undertaker or in accordance with a plan approved by SP Manweb or in accordance with any requirement of SP Manweb as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan (or as otherwise agreed between the undertaker and SP Manweb pursuant to paragraph 81).

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of SP Manweb, its officers, employees, contractors or agents;

(b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by SP Manweb as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 7 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus; and / or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) SP Manweb must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and shall act reasonably in considering its representations.

(5) The indemnity in sub-paragraph (1) shall be limited to a maximum aggregate liability of £25,000,000 (twenty-five million pounds sterling).

Enactments and agreements

84. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SP Manweb and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and SP Manweb in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

85.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or SP Manweb requires the removal of apparatus under paragraph 79(2) or SP Manweb makes requirements for the protection or alteration of apparatus under paragraph 81, the undertaker must use reasonable endeavours to co-ordinate the execution of the

works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SP Manweb's undertaking and SP Manweb must use reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SP Manweb's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by SP Manweb is required, it must not be unreasonably withheld or delayed.

Access

86. If in consequence of the agreement reached in accordance with paragraph 78(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable SP Manweb to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

87. Any difference or dispute arising between the undertaker and SP Manweb under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SP Manweb, determined by arbitration in accordance with article 48 (arbitration).

PART 8

FOR THE PROTECTION OF LIVERPOOL BAY CCS LIMITED

Application

88. For the protection of Liverpool Bay CCS Limited referred to in this Part of this Schedule the following provisions have effect, unless Liverpool Bay CCS Limited is acting with the benefit of the Order or as otherwise agreed in writing between the undertaker and Liverpool Bay CCS Limited.

Interpretation

89. In this Part of this Schedule—

"apparatus" means any pipeline, fibre optic cables, electrical supply, carbon dioxide interface facilities, AGIs or other apparatus belonging to, being constructed by, operated or maintained by Liverpool Bay CCS Limited for the purposes of the transport of carbon dioxide and excludes apparatus which is being constructed or altered by Liverpool Bay CCS Limited under this Order;

"functions" includes powers and duties; "in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which: (a) will or may be situated over, or within 15 metres measured in any direction of any Liverpool Bay CCS Limited apparatus; and/or (b) may in any way adversely affect any Liverpool Bay CCS Limited apparatus.

Restriction on construction and operation of Liverpool Bay CCS Works

90.—(1) Regardless of any provision of this Order, the undertaker may not carry out any of the Liverpool Bay CCS Works without the prior written consent of Liverpool Bay CCS Limited.

(2) Regardless of any provision of this Order, the undertaker may not alter, operate, maintain or in any way interfere with any Liverpool Bay CCS Limited apparatus without the prior written consent of Liverpool Bay CCS Limited.

(3) Any consent required under sub-paragraphs (1) and (2) may be given subject to such conditions as Liverpool Bay CCS Limited deems appropriate (acting reasonably).

Apparatus in temporarily closed streets

91. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by articles 15 (stopping up of streets, public rights of way and rights of navigation) or 16 (temporary restriction of use of streets), Liverpool Bay CCS Limited is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Interactions between this Order and the HyNet Order

92.—(1) Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised works and the works authorised under the HyNet Order.

(2) For the purposes of this paragraph, "reasonable endeavours" means—

(a) undertaking consultation on the detailed design and programming of the specified works and all works associated with or ancillary to the specified works to ensure that the design and programme for the CQLCP DCO does not unreasonably impede or interfere with the HyNet Order;

(b) having regard to the proposed programme of works for the HyNet Order as may be made available to the undertaker by Liverpool Bay CCS Limited;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised works; and

(d) keeping Liverpool Bay CCS Limited informed on the programme of works for the authorised works.

Authority to survey and investigate land

93.—(1) The undertaker may not exercise the power granted by article 23 (Authority to survey and investigate the land) in order to carry out intrusive site or ground investigations, or undertake any form of excavation, within 15m of any Liverpool Bay CCS Limited apparatus without the prior written consent of Liverpool Bay CCS.

(2) The undertaker may not rely on any power granted under this order to take access inside the fenced area of any above ground Liverpool Bay CCS Limited apparatus, including but not limited to, the Flint above ground installation within Work No.8 and the carbon dioxide interface facility to be constructed as Work No. 1(e) without the prior written consent of Liverpool Bay CCS.

Acquisition of land

94.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not—

(a) appropriate or acquire or take temporary possession of any land or apparatus owned by Liverpool Bay CCS Limited; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus owned by Liverpool Bay CCS Limited,

otherwise than by agreement.

(2) The undertaker must not under the powers of this Order do anything which would result in Liverpool Bay CCS Limited property or apparatus being incapable of being used or maintained.

Retained apparatus

95.—(1) Not less than 56 days before starting the execution of the specified works that are near to, or will or may affect any apparatus, the undertaker must submit to Liverpool Bay CCS Limited for approval a plan, section and description, which description must include a risk and method statement, of the works to be executed.

(2) The undertaker must not commence the specified works until Liverpool Bay CCS Limited has given its written approval of the plan, section and description submitted under sub-paragraph (1).

(3) Those works must be executed only in accordance with the approved plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Liverpool Bay CCS Limited for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Liverpool Bay CCS Limited is entitled to watch and inspect the execution of those works.

(4) Any requirements made by Liverpool Bay CCS Limited under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, section and description (including a risk and method statement) instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

Expenses and costs

96. Subject to the following provisions of this paragraph, the undertaker must repay to Liverpool Bay CCS Limited the reasonable expenses incurred in, or in connection with, the inspection, removal, replacement, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 95(1).

97.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 95(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Liverpool Bay CCS Limited, or there is any interruption in any service provided, or in the supply of any goods, by Liverpool Bay CCS Limited, the undertaker must—

(a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and

(b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by Liverpool Bay CCS Limited,

by reason or in consequence of any such damage or interruption.

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

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

Enactments and agreements

98. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Liverpool Bay CCS Limited in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Access

99. If in consequence of the agreement reached in accordance or the powers granted under this Order the access to any apparatus, including within the area of authorised development, is materially obstructed, the undertaker must provide such alternative means of access to such apparatus, as will enable Liverpool Bay CCS Limited to access, maintain or use the apparatus, no less effectively than was possible before such obstruction.

Consent

100. Where under this Part of this Schedule Liverpool Bay CCS Limited is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is not to be unreasonably withheld or delayed but must always be subject to the condition that Liverpool Bay CCS Limited complies with any relevant operational procedures and any obligations under the HyNet Order, economic licence or under statute.

Notices

101. Any plans submitted to Liverpool Bay CCS Limited by the undertaker pursuant to this Part must be submitted to Eni House, 10 Ebury Bridge Road, London SW1W 8PZ or notices.lbccs@eni.com or to such other address as Liverpool Bay CCS Limited may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Expert Determination

102.—(1) Article 48 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use all reasonable but commercially prudent endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

PART 9

FOR THE PROTECTION OF ENI UK LIMITED

Application

103. For the protection of Eni UK Limited referred to in this Part of this Schedule the following provisions have effect, unless Eni UK Limited is acting with the benefit of the Order or as otherwise agreed in writing between the undertaker and Eni UK Limited.

Interpretation

104. In this Part of this Schedule—

"apparatus" means any pipeline, fibre optic cables, electrical supply, interface facilities, AGIs or other apparatus belonging to, constructed by, operated or maintained by Eni UK Limited and excludes apparatus which is being constructed or altered by Eni UK Limited under this Order;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which: (a) will or may be situated over, or within 15 metres measured in any direction of any Eni UK Limited's apparatus; and/or (b) may in any way adversely affect any Eni UK Limited's apparatus.

Restriction on construction and operation of Eni Works

105.—(1) Regardless of any provision of this Order, the undertaker may not carry out any of the Eni Works without the prior written consent of Eni UK Limited.

(2) Regardless of any provision of this Order, the undertaker may not carry out any works to, maintain, alter, decommission, remove or in any way interfere with any Eni UK apparatus without the prior written consent of Eni UK Limited.

(3) Any consent required under sub-paragraphs (1) and (2) may be given subject to such conditions as Eni UK Limited deems appropriate (acting reasonably).

Apparatus in temporarily closed streets

106. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by articles 15 (stopping up of streets, public rights of way and rights of navigation) or 16 (temporary restriction of use of streets), Eni UK Limited is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Authority to survey and investigate land

107. The undertaker may not exercise the power granted by article 23 (Authority to survey and investigate the land) in order to carry out intrusive site or ground investigations, or undertake any form of excavation, within 15m of any Eni UK apparatus without the prior written consent of Eni UK Limited.

Acquisition of land

108.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not—

(a) appropriate or acquire or take temporary possession of any land or apparatus owned by Eni UK Limited; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus owned by Eni UK Limited,

otherwise than by agreement.

(2) The undertaker must not under the powers of this Order do anything which would result in Eni UK Limited property or apparatus being incapable of being used or maintained.

Retained apparatus

109.—(1) Not less than 56 days before starting the execution of the specified works that are near to, or will or may affect any apparatus, the undertaker must submit to Eni UK Limited for approval a plan, section and description, which description must include a risk and method statement, of the works to be executed.

(2) The undertaker must not commence the specified works until Eni UK Limited has given its written approval of the plan, section and description submitted under sub-paragraph (1).

(3) Those works must be executed only in accordance with the approved plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Eni UK Limited for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Eni UK Limited is entitled to watch and inspect the execution of those works.

(4) Any requirements made by Eni UK Limited under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, section and description (including a risk and method statement) instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

Expenses and costs

110. Subject to the following provisions of this paragraph, the undertaker must repay to Eni UK Limited the reasonable expenses incurred in, or in connection with, the inspection, removal, replacement, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 109(1).

111.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 109(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Eni UK Limited, or there is any interruption in any service provided, or in the supply of any goods, by Eni UK Limited, the undertaker must—

(a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and

(b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by Eni UK Limited,

by reason or in consequence of any such damage or interruption.

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

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

Enactments and agreements

112. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Eni UK Limited in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Access

113. If in consequence of the agreement reached in accordance or the powers granted under this Order the access to any apparatus, including within the area of authorised development, is materially obstructed, the undertaker must provide such alternative means of access to such apparatus, as will enable Eni UK Limited to access, maintain or use the apparatus, no less effectively than was possible before such obstruction.

Consent

114. Where under this Part of this Schedule Eni UK Limited is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is not to be unreasonably withheld or delayed but is subject to the condition that Eni UK Limited complies with any relevant operational procedures and any obligations under statute.

Notices

115. Any plans submitted to Eni UK Limited by the undertaker pursuant to this Part must be submitted to ENI UK Limited. ENI House, 10 Ebury Bridge Road, London SW1W 8PZ Attention: Legal Manager or to such other address as Eni UK Limited may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Expert Determination

116.—(1) Article 48 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use all reasonable but commercially prudent endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

PART 10

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

117.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of the Order)—

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to 127(3)(b).

Interpretation

118. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by or on behalf of the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event and such insurance shall be maintained during the construction period of the authorised works; and after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either:

(a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker's liability to National Gas to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and

authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" in this Part of this Schedule shall include any below ground surveys and associated monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Gas's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas: construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Gas" means National Gas Transmission plc (Company Number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Network Code" means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any

failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the specified works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the specified works;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Gas acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 123(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 123(2) or otherwise; and

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22".

On Street Apparatus

119. Except for paragraphs 120 (apparatus of National Gas in stopped up streets), 125 (retained apparatus: protection), 126 (expenses) and 127 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Gas in stopped up streets

120.—(1) Where any street is stopped up under article 15 (stopping up of streets, public rights of way and rights of navigation), and 16 (temporary restriction of use of streets) if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 123 (removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 125 (retained apparatus: protection).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (stopping up of streets, public rights of way and rights of navigation) or 16 (temporary restriction of use of streets), National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

121.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not

(a) appropriate or acquire or take temporary possession of any land or apparatus owned by National Gas; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas,

otherwise than by agreement.

122.—(1) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the specified works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such specified works.

(2) Save where otherwise agreed in writing between National Gas and the undertaker the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(3) Any agreement or consent granted by National Gas under paragraph 125 (retained apparatus: protection) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

123.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3) secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 124(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas may in its sole discretion, on receipt of a

written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraphs (2) or (3) proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

124.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 131 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

125.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation and positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (1) or (5); and

(b) must not be unreasonably withheld (and for the avoidance of doubt a delay in excess of 56 days would constitute unreasonably withholding approval).

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gass' satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 117 to 119 and 121 to 124 apply as if the removal of the apparatus had been required by the undertaker under paragraph 123(2) (removal of apparatus).

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

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times;

(11) At all times when carrying out any specified works the undertaker must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HSG 47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 126.

Expenses

126.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses reasonably and properly incurred by National Gas in or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which is required in consequence of the execution of any authorised works including without limitation-—

(a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 123(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works under paragraph 125(8) (including any temporary protective works and their removal); and

(2) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(3) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(4) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

(5) and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 131 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker..

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

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

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

Indemnity

127.—(1) Subject to sub-paragraphs (2) and (7), if by reason or in consequence of the construction of any authorised works or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay within 30 days of receipt of an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and

(b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or articles 7 (benefit of the Order) or 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the prior written consent of the undertaker.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) The indemnity in sub-paragraph (1) shall be limited to a maximum aggregate liability of £50,000,000 (fifty million pounds sterling).

(8) The undertaker must not commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus until the following conditions are satisfied:

(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the specified works from the proposed date of commencement of construction of the specified works) and National Gas has confirmed the same to the undertaker in writing; and

(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the specified works from the proposed date of commencement of construction of the specified works) and National Gas has confirmed the same in writing to the undertaker.

(9) In the event that the undertaker fails to comply with 127(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

128. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

129.—(1) Where in consequence of the proposed construction of any part of the specified works, the undertaker or National Gas requires the removal of apparatus under paragraph 123(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 125 (retained apparatus: protection), the undertaker shall use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the specified works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas shall use reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

130. If in consequence of the agreement reached in accordance with paragraph 121(1) (acquisition of land) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

131. Any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 48 (arbitration).

Notices

132. Notwithstanding article 46 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 125 (retained apparatus: protection) must be submitted to https://lsbud.co.uk/ or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 11

FOR THE PROTECTION OF WALES AND WEST UTILITIES

Application

133. For the protection of Wales and West Utilities the following provisions have effect, unless otherwise agreed in writing between the undertaker and Wales and West Utilities.

Interpretation

134. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Wales and the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by Wales and West Utilities for the purposes of purposes of carrying out its statutory undertaking and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

"security infrastructure" includes cameras, perimeter fencing, fencing and gates and any other security measures which are permanent in nature and reasonably required in order to ensure an appropriate level of security in respect of any apparatus; and

"Wales and West Utilities" means Wales and West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ and includes any successor in title in respect of the apparatus or any successor gas transporter (within the meaning of Part 1 of the Gas Act 1986) within the area of the authorised development.

Precedence of the 1991 Act in respect of apparatus in the streets

135. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Wales and West Utilities are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in temporarily closed streets

136. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by articles 15 (stopping up of streets, public rights of way and rights of navigation) or 16 (temporary restriction of use of streets), Wales and West Utilities shall have the same powers and rights in respect of that apparatus that it enjoyed prior to the restriction and the undertaker must grant Wales and West Utilities liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street to enable it to use, maintain, remove, decommission and divert any apparatus which at the time of the prohibition or restriction was in that street but nothing in this paragraph affects any right of the undertaker or of Wales and West Utilities to require the removal of that apparatus under paragraph 138 or the power of the undertaker to carry out works under paragraph 140.

Acquisition of land and apparatus

137. Regardless of any provision in this Order or anything shown on the land plans or contained in a book of reference relating to the Order, the undertaker must not appropriate, acquire or take temporary possession of any apparatus, land or rights from Wales and West Utilities otherwise than by agreement.

Removal of apparatus

138.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in , on over or under any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that apparatus owned or maintained by Wales and West Utilities is relocated or diverted, that apparatus must not be removed or decommissioned under this part of this Schedule, and any right of Wales and West Utilities to use and maintain that apparatus in that land and to gain access to it must not be extinguished, or affected until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Wales and West Utilities in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Wales and West Utilities a minimum of 42 day's written notice of that requirement, together with a plan, description and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Wales and West Utilities reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Wales and West Utilities the necessary facilities and rights for the construction of and access to alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus along with any appropriate working areas.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Wales and West Utilities must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Wales and West Utilities and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) Wales and West Utilities must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48 (arbitration) and after the grant to Wales and West Utilities of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

139.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Wales and West Utilities facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed or decommissioned, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Wales and West Utilities or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

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

Retained apparatus

140.—(1) Not less than 42 days before starting the execution of any works of the type referred to in paragraph 138(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 138(1), the undertaker must submit to Wales and West Utilities a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Wales and West Utilities for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Wales and West Utilities is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Wales and West Utilities under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Wales and West Utilities in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal or decommissioning of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 133 to 139 apply as if the removal or decommissioning of the apparatus had been required by the undertaker under paragraph 138(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 36 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

Expenses and costs

141.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Wales and West Utilities on demand the reasonable expenses incurred by Wales and West Utilities in, or in connection with, the inspection, relaying, replacing, removal, decommissioning, alteration or protection of any apparatus or security infrastructure or the construction of any new apparatus or security infrastructure which may be required in consequence of the execution of any such works as are referred to in paragraph 138(2).

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

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Wales and West Utilities in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

142.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 138(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Wales and West Utilities, or there is any interruption in any service provided, or in the supply of any goods, by Wales and West Utilities, the undertaker must—

(a) bear and pay the cost reasonably incurred by Wales and West Utilities in making good such damage or restoring the supply; and

(b) provide reasonable compensation to Wales and West Utilities for any other expenses, loss, damages, penalty or costs incurred by Wales and West Utilities,

by reason or in consequence of any such damage or interruption.

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

(3) The fact that any act or thing may have been done by Wales and West Utilities on behalf of the undertaker or in accordance with a plan, section or description approved by Wales and West Utilities or in accordance with any requirement of Wales and West Utilities or under its supervision does not, subject to sub-paragraph (2), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(4) Wales and West Utilities must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made unless payment is required in connection

with a statutory compensation scheme without first consulting the undertaker and considering its representations.

Enactments and agreements

143. Nothing in this Part of Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Wales and West Utilities in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 12

FOR THE PROTECTION OF UNIPER

Application

144. For the protection of Uniper referred to in this Part of this Schedule the following provisions have effect where an entity other than Uniper is acting as the undertaker unless otherwise agreed in writing between Uniper and that other entity.

Interpretation

145. In this Part of this Schedule—

"apparatus" means any pipeline, cables, electrical supply, structures or other apparatus belonging to, being constructed by, operated or maintained by Uniper for the purposes of the generation and export of electricity;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which: (a) will or may be situated over, or within 15 metres measured in any direction of, any Uniper apparatus the removal of which has not been required either by the undertaker under paragraph 150 or otherwise; and/or (b) may in any way adversely affect any Uniper apparatus the removal of which has not been required by the undertaker under paragraph 150; and

"Uniper" means Uniper UK Limited and/or Uniper UK Connah's Quay Low Carbon Power Limited and includes any successor in title or function.

Restriction on construction and operation of authorised development

146.—(1) Regardless of any provision of this Order, the undertaker may not carry out any of the authorised development without the prior written consent of Uniper.

(2) Regardless of any provision of this Order, the undertaker may not alter, operate, maintain or in any way interfere with any Uniper apparatus without the prior written consent of Uniper.

(3) Any consent required under sub-paragraphs (1) and (2) may be given subject to such conditions as Uniper deems appropriate (acting reasonably).

Apparatus in temporarily closed streets

147. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by articles 15 (stopping up of streets, public rights of way and rights of navigation) or 16 (temporary restriction of use of streets), Uniper is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under

any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Authority to survey and investigate land

148.—(1) The undertaker may not exercise the power granted by article 23 (authority to survey and investigate the land) in order to carry out intrusive site or ground investigations, or undertake any form of excavation, within 15m of any Uniper apparatus without the prior written consent of Uniper.

(2) The undertaker may not rely on any power granted under this order to take access inside the existing power station site without the prior written consent of Uniper.

Acquisition of land

149.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not—

(a) appropriate or acquire or take temporary possession of any land or apparatus owned by Uniper; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus owned by Uniper,

otherwise than by agreement with Uniper.

(2) The undertaker must not under the powers of this Order do anything which would result in Uniper's property or apparatus being incapable of being used or maintained.

Retained apparatus

150.—(1) Not less than 56 days before starting the execution of the specified works that are near to, or will or may affect any apparatus, the undertaker must submit to Uniper for approval a plan, section and description, which description must include a risk and method statement, of the works to be executed.

(2) The undertaker must not commence the specified works until Uniper has given its written approval of the plan, section and description submitted under sub-paragraph (1).

(3) Those works must be executed only in accordance with the approved plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Uniper for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Uniper is entitled to watch and inspect the execution of those works.

(4) Any requirements made by Uniper under sub-paragraph (3) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) is submitted to Uniper.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, section and description (including a risk and method statement) instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

Expenses and costs

151. Subject to the following provisions of this paragraph, the undertaker must repay to Uniper the reasonable expenses incurred in, or in connection with, the inspection, removal, replacement,

alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 150(1).

152.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 150(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Uniper, or there is any interruption in any service provided, or in the supply of any electricity, by Uniper, the undertaker must—

(a) bear and pay the cost reasonably incurred by Uniper in making good such damage or restoring the supply; and

(b) provide reasonable compensation to Uniper for any other expenses, loss, damages, penalty or costs incurred by Uniper,

by reason or in consequence of any such damage or interruption.

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

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

Enactments and agreements

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

Access

154. If in consequence of the agreement reached in accordance or the powers granted under this Order the access to any apparatus, including within the area of authorised development, is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Uniper to access, maintain or use the apparatus no less effectively than was possible before such obstruction.

Consent

155. Where under this Part of this Schedule Uniper is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is not to be unreasonably withheld or delayed but must always be subject to the condition that Uniper complies with any relevant operational procedures and any obligations under this Order, its generation licence or under statute.

Notices

156. Any plans submitted to Uniper by the undertaker pursuant to this Part must be submitted to Compton House, 2300 The Crescent, Birmingham Business Park, Birmingham, England B37 7YE or CQC@uniper.energy or to such other address as Uniper may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Expert Determination

157.—(1) Article 48 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a

member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use all reasonable but commercially prudent endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

PART 13

FOR THE PROTECTION OF DŴR CYMRU CYFYNGEDIG

158. The provisions of this Part of this Schedule have effect for the protection of DC unless otherwise agreed in writing between the undertaker and DC.

159. In this Part of this Schedule:

"accessories" has the same meaning as that set out in section 219 WIA 1991 but also includes any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form reasonably prescribed from time to time by DC;

"DC apparatus" means all apparatus or accessories vested in or belonging to DC for the purpose of carrying on its statutory undertaking including but not limited to reservoirs, water treatment works and waste water treatment works;

"clearance area" means the area of land:

(a) within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter; or

(b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is 300mm in diameter or more.

"DC" means Dŵr Cymru Cyfyngedig, a limited company registered in Wales under Company No. 2366777 and having its registered office at Dwr Cymru Welsh Water, Linea, Fortran Road, St Mellons, Cardiff, Wales, CF3 0LT or its properly authorised agents or sub-contractors;

"draft specification" means a detailed plan, cross- section and description of the works to be prepared by the undertaker (including, without limitation, a method statement, risk assessment and details of the proposed construction methods and programmes) setting out the position of the affected DC apparatus and the nature and extent of the works proposed;

"emergency works" has the same meaning as in Part III of the 1991 Act;

"functions" has the same meaning as in section 219 of the WIA 1991 and includes powers and duties;

"in" in a context referring to DC apparatus in land includes a reference to DC apparatus under, over or upon land; and

"sustainable drainage system" means any structure designed to receive rainwater and other surface water where such structure includes any feature or aspect of design that is intended to receive or facilitate the receipt of rainwater except a public sewer or a natural watercourse;

"WIA 1991" means the Water Industry Act 1991(**a**);

"specified works" means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are within 15 metres (measured in any direction) of any DC apparatus, or reasonably likely to affect any DC apparatus together with all ancillary actions relating hereto; and

for the avoidance of doubt, all other terms are as defined in this Part of this Schedule.

160.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not, without the prior agreement of DC (such agreement not to be unreasonably withheld or delayed) and otherwise than in accordance with the provisions of this Part of this Schedule, acquire any DC apparatus or any accessories to it, extinguish, override or otherwise interfere with any easement or other right or interest of DC, or acquire any land or other interest of DC (whether or not identified in the book of reference).

(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DC's rights to access DC apparatus or accessories but subject always to paragraphs 165 and 166 of this Part and to the undertaker giving DC 28 days' notice of such interference.

Precedence of the WIA 1991

161.—(1) Regardless of any provision of this Order and this Part of this Schedule the undertaker must comply fully with all provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DC apparatus and nothing in this Order releases the undertaker from the requirement to comply with the provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DC apparatus, including without limitation:

(a) sections 41-44 of the WIA 1991 in respect of water main requisitions;

(b) section 45 of the WIA 1991 in respect of any connections to a water main;

(c) sections 98-101 of the WIA 1991 in respect of sewer requisitions;

(d) section 102 of the WIA 1991 in respect of the adoption of sewers and disposal works;

(e) section 104 of the WIA 1991 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;

(f) sections 106 to 109 of the WIA 1991 (inclusive) in respect of any connections to public sewers;

(g) section 111 of the WIA 1991 in respect of the restrictions on use of public sewers;

(h) sections 158 and 159 of the WIA 1991 in respect of statutory rights of access to DC apparatus;

(i) section 174 of the WIA 1991 in respect of offences of interference with works etc;

(j) section 178 of the WIA 1991 in respect of obstruction of sewerage works etc;

(k) section 185 of the WIA 1991 in respect of the removal, diversion or alteration of DC apparatus.

(**a**) 1991 c. 56.

(2) The arbitration provisions contained in this Order will not apply where DC uses a warrant of entry in accordance with the provisions of the WIA 1991.

Protection of DC apparatus

162.—(1) Not less than 28 days before starting the execution of any specified works that are within the clearance area or will, or could reasonably foreseeably affect, any DC apparatus, the undertaker must submit to DC written notice together with a draft specification. For the purposes of preparing the draft specification DC must, following a written request and subject to such reasonable conditions as may be imposed by DC (including payment in advance of DC's reasonable costs in meeting the request), provide the undertaker with copies of such plans and records of its apparatus as may be held by DC.

(2) DC is to examine the draft specification submitted under sub-paragraph (2) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph (2) will be repeated where those amendments are not accepted by the undertaker).

(3) For the avoidance of doubt, DC's proposed amendments pursuant to sub-paragraph (2) may include such reasonable requirements for the alteration (including but not limited to the extension of DC apparatus) or otherwise for the protection of DC apparatus, or for securing access to it and DC is entitled to recover from the undertaker all reasonable and properly incurred costs and expenses incurred in examining the draft specification, considering any amendments, and engaging in any discussions arising from the same.

(4) Once approved under sub-paragraph (2), the draft specification is to become the specification and the specified works are to be executed only in accordance with the specification and such reasonable requirements as may be made in accordance with sub-paragraph (2) and DC is entitled to watch and inspect the execution of those specified works, and the undertaker must reimburse DC for all reasonable incurred costs and expenses arising from such watching, supervision or inspection.

(5) Nothing in this paragraph 162 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 162 apply to and in respect of the new draft specification and for the avoidance of doubt, DC is entitled to recover its reasonable costs arising from the consideration of any such revised draft specification.

(6) DC may elect to carry out any temporary and/or protective works to DC apparatus specified under sub-paragraph (2), and where DC does so, it must:

(a) agree the scope and timings of the works with the undertaker (such agreement not to be unreasonably withheld or delayed by the undertaker);

(b) provide the undertaker with an invoice and supporting evidence of the estimated costs of the works on the basis of which DC and the undertaker are to agree the reasonable costs of the works to be met by the undertaker;

(c) following agreement and payment of the costs, DC will as soon as reasonably practicable carry out and complete the works; and

(d) notify the undertaker immediately in writing upon completion of the temporary and/or protective works.

(7) The undertaker must give DC at least 7 days' advance written notice of its intention to make any trial holes within 15 metres (measured in any direction) of any DC apparatus, such notice to include details of the timings and location of the proposed trial holes and to allow a representative of DC to attend and observe these specified works, and the undertaker must reimburse DC for all reasonable costs incurred by DC in respect of such attendance or supervision.

(8) Any affected DC apparatus which is no longer required by DC but is not removed shall be transferred to the undertaker by way of a deed of transfer from DC at the undertaker's expense and on such terms (including as to costs, liabilities and indemnities) as DC reasonably requires, and

the undertaker must pay all reasonable legal, professional and administrative costs incurred by DC in connection with such transfer.

(9) DC may require the undertaker to enter into an asset protection agreement prior to the carrying out of any specified work.

Suspension of specified works

163.—(1) DC is entitled to instruct the undertaker to suspend the relevant specified works if in DC's reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the specified works, have caused damage, or pose an immediate risk of damage to, any DC apparatus (other than DC apparatus which is intended to be removed for the purposes of the specified works). In the event of such instruction being given by DC:

(a) the undertaker must procure that it and its contractor(s) and subcontractor(s) shall immediately suspend or cease the specified works having due regard to health and safety requirements;

(b) the undertaker and DC must act reasonably and without delay in discussing and agreeing the remedial actions required prior to resuming the specified works;

(c) DC must submit to the undertaker within 5 days following the suspension, a written notice specifying the reasons for suspending the specified works;

(d) in the event that DC fails to supply the written notice within 10 days of suspension DC's instruction to suspend the specified works will be void and the undertaker will be entitled to recommence the specified works; and

(e) where DC carries out any remedial works pursuant to sub-paragraph (1), DC must commence, carry out and complete such remedial works as soon as reasonably practicable and DC must give the undertaker notice upon completion of such remedial works and on receipt of such notice the undertaker is entitled to resume the specified works.

(2) DCC is entitled to reclaim all reasonable and proper costs undertaken in accordance with this paragraph 163, including (but not limited to) the costs of inspection, investigation, supervision, remedial works and associated administrative, legal and professional costs.

Co-Operation

164.—(1) In the event that either the undertaker or DC (for the purpose of this paragraph 164 "the party" or together "the parties") wishes to take any action which would impact on the ability of the undertaker to carry out the authorised development or DC to carry out its statutory functions, the parties must use reasonable endeavours to cooperate with one another to align their respective programmes of work so to minimise or avoid disruption to the other party's works.

(2) Subject to paragraph 165, differences or disputes arising between the undertaker and DC under this Part of this Schedule will, unless otherwise agreed in writing between the undertaker and DC, be determined by arbitration in accordance with the Order.

Emergency Works

165.—(1) DC must at all times be permitted to carry out any emergency works in relation to its apparatus within the Order limits in the exercise of its statutory powers and duties.

(2) Emergency works required in order for DC to fulfil its statutory functions under sub-paragraph 165 takes precedence in terms of timing of such works over specified works to be carried out by the undertaker and, in such circumstances, the undertaker must immediately, where necessary, suspend and reschedule its specified works accordingly.

(3) Where DC must carry out emergency works pursuant to sub-paragraph (2), such works must be completed as soon as reasonably practicable to enable the undertaker to continue with its specified works.

Damage to DC apparatus

166.—(1) If in consequence of the construction of any of the specified works, any damage is caused to any DC apparatus (other than DC apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of the specified works), or there is any interruption in any service provided, or in the supply of any goods, by DC, the undertaker must—

(a) bear and pay within 30 days of receipt of a VAT invoice or claim by DC the cost reasonably and properly incurred by DC in making good any damage or restoring the supply; and

(b) indemnify and keep indemnified DC against all other expenses, loss, damages, penalty, liabilities or costs incurred by DC, by reason or in consequence of any the damage or interruption.

(2) Nothing in sub-paragraph (2) imposes any liability on the undertaker—

(a) to the extent that the damage or interruption is attributable to the act, neglect or default of DC or of its officers, employees, contractors or agents;

(b) in respect of any specified works and/or any other works carried out by DC as agent or, transferee, as assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or articles 7 (benefit of the Order) or 8 (consent to transfer benefit of the Order);

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(3) The indemnity in sub-paragraph (1)(b) shall be limited to a maximum aggregate liability of £50,000,000 (fifty million pounds sterling).

(4) DC must give the undertaker reasonable notice of any claim made under this paragraph and must not, without the undertaker's prior written consent (such consent not to be unreasonably withheld or delayed), enter into any such settlement, admission of liability or compromise which would materially affect the undertaker's liability under this paragraph.

(5) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and DC in respect of any DC apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

SCHEDULE 14

Article 45

Documents and plans to be certified

(1) Document name	*(2) Document reference*	*(3) Revision number*	*(4) Date*
access, streets, rights of way and rights of navigation plans	2.6	1	March 2026
book of reference	4.1	4	May 2026
design principles document	7.8	2	March 2026
environmental statement (consisting of 4 volumes)	6.1–6.4	4	May 2026
first unilateral undertaking	9.42	0	June 2026
framework construction	6.5	8	October 2026

environmental management plan framework	6.6	5	October 2026
construction traffic management plan framework	6.7	0	August 2025
construction worker travel plan framework	6.5	7	June 2026
site waste management plan (included within framework construction environment management plan)			
greenhouse gas reduction strategy	6.4	0	August 2025
hedgerow removal plan	2.8	1	March 2026
land plans	2.2	2	May 2026
lighting strategy	7.22	1	May 2026
marine invasive non-native species outline management plan	6.4	2	March 2026
navigational risk assessment	6.15	0	August 2025
off-site net benefit for biodiversity and green infrastructure strategy	6.14	3	May 2026
Operation and maintenance mitigation register	6.4	1	May 2026
outline Curlew Implementation and Monitoring Plan	6.13	5	October 2026
outline landscape and ecological management plan	6.9	5	May 2026
outline Nitrogen Management Plan	9.47	0	October 2026
outline Saltmarsh Implementation and Monitoring Plan	6.16	3	June 2026
outline surface water drainage strategy	6.4	3	March 2026
Overarching Written Scheme of Investigation for Terrestrial and Marine Heritage Mitigation	6.8	1	March 2026
parameter plans	2.5	1	March 2026
second unilateral undertaking	9.48	0	October 2026
Traffic Regulation Measures Plans	2.7	1	March 2026

SCHEDULE 15

Article 48

Arbitration rules

Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to article 48 (arbitration) of the Order.

(2) The Parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the Parties. Any dispute which is not resolved amicably by the senior management of the Parties within twenty business days of the dispute arising, or such longer period as agreed in writing by the Parties, will be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration will be deemed to have commenced when a party ("the Claimant") serves a written notice of arbitration on the other party ("the Respondent").

Time periods

2.—(1) All time periods in these Arbitration Rules will be measured in business days and this will exclude weekends, bank and public holidays.

(2) Time periods will be calculated from the day after the Arbitrator is appointed which will be either—

(a) the date the Arbitrator notifies the parties in writing of their acceptance of an appointment by agreement of the parties; or

(b) the date the Arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the Arbitrator being appointed, the Claimant must provide both the Respondent and the Arbitrator with—

(a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant's contentions as to those issues, and the remedy it is seeking; and

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the Claimant's statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent must provide the Claimant and the Arbitrator with—

(a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and

(c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 5 days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—

(a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the Respondent's submissions;

(c) any expert report in response to the Respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and

(e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The Arbitrator must make an award on the substantive difference based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within 5 days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the Arbitrator advising the parties that they will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator must direct a date and venue which they consider is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

(5) A decision must be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

(6) There is no process of examination and cross-examination of experts, but the Arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) is—

(a) at least 20 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and

(c) the form and content of a joint report will be as directed by the Arbitrator and must be provided at least 5 days before the hearing.

(7) Within 10 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator will take these submissions into account in the Award.

(8) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document and may make a

decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(10) The Arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given is to be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996(**a**), including the non-mandatory sections, save where modified by these Rules.

(2) There will be no discovery or disclosure, except that the Arbitrator has the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and procedure—

(a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

Costs

6.—(1) The costs of the Arbitration must include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Subject to sub-paragraph (3), the Arbitrator must award recoverable costs on the general principle that each party should bear its own costs.

(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be confidential and will only be publicly disclosed where required by law or with the agreement of both parties.

(2) The Arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph prevents any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

(**a**) 1996 c. 23.

SCHEDULE 16

Article 3

Protection of the coherence of the national site network

PART 1

Dee Estuary / Aber Dyfrdwy Special Protection Area / Ramsar site: delivery of measures in respect of functionally linked land

1. In this Part—

"CIMP" means the Curlew Implementation and Monitoring Plan for the delivery of measures to mitigate for the loss of curlew habitat on functionally linked land as a result of the authorised development and which shall generally accord with the outline CIMP;

"CSG" means the Curlew Steering Group which shall be established to inform, through consultation, the undertaker in the scope and delivery of the CIMP;

"mitigation measure" means the measure to create and maintain replacement curlew habitat to mitigate the loss of curlew habitat on functionally linked land as a result of the authorised development; and

"outline CIMP" means the Outline Curlew Implementation and Monitoring Plan identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.).

2.—(1) No stage of Work No. 1 or any site clearance works required in connection with Work No. 1 may commence until a plan for the work of the CSG has been submitted to and approved by the Secretary of State.

(2) The plan submitted pursuant to sub-paragraph (1) must include:

(a) terms of reference of the CSG;

(b) the membership of the CSG, having regard to the requirements in sub-paragraphs (3) and (4);

(c) details of the schedule of meetings, timetable for preparation of the CIMP and reporting and review periods; and

(d) the dispute resolution mechanism and confidentiality provisions.

(3) The undertaker must invite representatives from the following organisations to participate as core members of the CSG:

(a) the relevant statutory nature conservation body; and

(b) the relevant local planning authority for the area in which the mitigation measure is to be delivered.

(4) The undertaker must invite representatives from the following organisations to participate as advisory members of the CSG:

(a) the Royal Society for the Protection of Birds; and

(b) the Deeside Naturalists' Society.

(5) The CSG must be consulted on the proposed CIMP to be approved pursuant to paragraph 3(1) prior to the submission to the Secretary of State.

3.—(1) No stage of Work No. 1 or any site clearance works required in connection with Work No. 1 may commence until a CIMP has been submitted to and approved by the Secretary of State, in consultation with the relevant statutory nature conservation body and the relevant local planning authority for the area in which the mitigation measure is to be delivered.

(2) The CIMP must be in general accordance with the outline CIMP and include the following—

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

(b) details of the location where the mitigation measure will be delivered and any features, landscaping and planting thereof and why it is ecologically suitable to meet the aims and objectives of the plan;

(c) details of any consents, licences and approvals required for implementation;

(d) details of any habitat and water management measures to meet the aims and objectives of the CIMP;

(e) details of access to, and biosecurity of, the location where the mitigation measure will be delivered;

(f) details of ongoing monitoring and reporting of the effectiveness of the mitigation measure including—

(i) survey methods;

(ii) survey programmes for curlew, terrestrial invertebrates, hydrology, and habitat;

(iii) success criteria;

(iv) adaptive management measures and thresholds used to trigger any adaptive management;

(v) sharing of monitoring data with the relevant Local Environmental Records Centre(s); and

(vi) timescales for monitoring reports to be delivered to the CSG and the Secretary of State under paragraph 4;

(g) an implementation timetable including details as to how the mitigation measure will be delivered before loss and disturbance of curlew habitat on functionally linked land as a result of the authorised development; and

(h) details as to how the CIMP has had regard to the output of consultation with the CSG and the provision of a signed CSG agreement log recording the same.

(3) The CIMP must be implemented by the undertaker (or at is expense) as approved, unless otherwise agreed in writing by the Secretary of State, in consultation with the relevant statutory nature conservation body and the relevant local planning authority for the area in which the mitigation measure is to be delivered.

(4) The mitigation measure as approved in the CIMP must be maintained by the undertaker (or at its expense) for the lifetime of the authorised development and such maintenance shall only cease following approval in writing by the Secretary of State, in consultation with the relevant statutory nature conservation body and the relevant local planning authority for the area in which the mitigation measure is to be delivered.

4. Unless otherwise agreed with the Secretary of State, the results of any monitoring required pursuant to the CIMP must be made publicly available and submitted at least annually as a report to the Secretary of State and members of the CSG. If the undertaker, or on receipt of a monitoring report, the Secretary of State, determines that the mitigation measure delivered has been ineffective at meeting the aims and objectives of the CIMP, the undertaker must consult the core members of the CSG on any adaptive management measures to address this and submit its proposals to the Secretary of State for approval, in consultation with the relevant statutory nature conservation body and the relevant local planning authority for the area in which the mitigation measure is to be delivered.

5. The CIMP approved under this Part of this Schedule includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved CIMP must be in general accordance with the outline CIMP and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the environmental statement.

PART 2

Dee Estuary / Aber Dyfrdwy Special Area of Conservation / Special Protection Area / Ramsar site: delivery of measures in respect of saltmarsh

6. In this Part—

"mitigation measure" means the measure to enable the retreat of saltmarsh through modification of existing embankments to mitigate the loss of Atlantic salt meadow as a result of the authorised development;

"SIMP" means the Saltmarsh Implementation and Monitoring Plan for the delivery of measures to mitigate for the loss of Atlantic salt meadow as a result of the authorised development and which shall generally accord with the outline SIMP;

"SSG" means the saltmarsh steering group which shall be established to inform, through consultation, the undertaker in the scope and delivery of the SIMP; and

"outline SIMP" means the outline Saltmarsh Implementation and Monitoring Plan identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.).

7.—(1) No stage of Work No. 5 may be commenced until a plan for the work of the SSG has been submitted to and approved by the Secretary of State.

(2) The plan submitted pursuant to sub-paragraph (1) must include:

(a) terms of reference of the SSG;

(b) the membership of the SSG, having regard to the requirements in sub-paragraph (3);

(c) details of the schedule of meetings, timetable for preparation of the SIMP and reporting and review periods; and

(d) the dispute resolution mechanism and confidentiality provisions.

(3) The undertaker must invite representatives from the relevant statutory nature conservation body and the relevant local planning authority for the area in which the mitigation measure is to be delivered to participate in the SSG.

(4) The SSG must be consulted on the proposed SIMP to be approved pursuant to paragraph 8(1) prior to the submission to the Secretary of State.

8.—(1) No stage of Work No. 5 may commence until the SIMP has been submitted to and approved by the Secretary of State, in consultation with the relevant statutory nature conservation body and the relevant local planning authority for the area in which the mitigation measure is to be delivered.

(2) The SIMP must be in general accordance with the outline SIMP and include the following—

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

(b) details of the extent and condition of the existing pioneer saltmarsh and Atlantic salt meadow vegetation communities intended to colonise the locations where the mitigation measure will be delivered;

(c) details of the locations where the mitigation measure will be delivered and why they are ecologically suitable to meet the aims and objectives of the plan;

(d) details of the design and cross-sections for the managed realignment;

(e) details of any consents, licences and approvals required for implementation;

(f) details of any habitat and water management measures to meet the aims and objectives of the plan;

(g) details of access to, and biosecurity of, the locations where the mitigation measure will be delivered;

(h) details of ongoing monitoring and reporting of the effectiveness of the mitigation measure, including—

(i) survey methods;

(ii) survey programmes for hydrology, topography, and habitat;

(iii) success criteria;

(iv) adaptive management measures and thresholds used to trigger any adaptive management;

(v) sharing of monitoring data with the relevant Local Environmental Records Centre(s); and

(vi) timescales for monitoring reports to be delivered to the SSG and the Secretary of State under paragraph 9;

(i) an implementation timetable demonstrating how the plan will be effective at meeting the aims and objectives of the plan ahead of any loss of saltmarsh; and

(j) details as to how the SIMP has had regard to the output of consultation with the SSG and the provision of a signed SSG agreement log recording the same.

(3) The SIMP must be implemented by the undertaker (or at its expense) as approved, unless otherwise agreed in writing by the Secretary of State, in consultation with the relevant statutory nature conservation body and the relevant local planning authority for the area in which the mitigation measure is to be delivered.

(4) The mitigation measure as approved in the SIMP must be maintained by the undertaker (or at its expense) for the lifetime of the authorised development and such maintenance shall only cease following approval in writing by the Secretary of State in consultation with the relevant statutory nature conservation body and the relevant local planning authority for the area in which the mitigation measure is to be delivered.

9. Unless otherwise agreed with the Secretary of State, the results of any monitoring required pursuant to the SIMP must be made publicly available and submitted at least annually as a report to the Secretary of State and members of the SSG. If the undertaker, or on receipt of a monitoring report, the Secretary of State, determines that the mitigation measure delivered has been ineffective at meeting the aims and objectives of the SIMP, the undertaker must consult the SSG on any adaptive management measures to address this and submit its proposals to the Secretary of State for approval, in consultation with the relevant statutory nature conservation body and the relevant local planning authority for the area in which the mitigation measure is to be delivered.

10. The SIMP approved under this Part of this Schedule includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved SIMP must be in general accordance with the outline SIMP and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the environmental statement.

PART 3

Dee Estuary / Aber Dyfrdwy Special Area of Conservation / Special Protection Area / Ramsar site: delivery of measures in respect of saltmarsh management

11. In this Part—

"mitigation measure" means the measure to increase the resilience of the Atlantic salt meadow vegetation to nitrogen deposition through targeted management activities, including activities to reduce the extent of negative indicator species;

"outline NMP" means the outline Nitrogen Management Plan identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 45 (certification of plans, etc.); and

"SMSG" means the saltmarsh management steering group which shall be established to inform, through consultation, the undertaker in the scope and delivery of the Nitrogen Management Plan.

12.—(1) No stage of Work No. 1(a) or 1(b) or any site clearance works required in connection with Work No. 1(a) or 1(b) may commence until a plan for the work of the SMSG has been submitted to and approved by the Secretary of State.

(2) The plan submitted pursuant to sub-paragraph (1) must include:

(a) terms of reference of the SMSG;

(b) the membership of the SMSG, having regard to the requirements in sub-paragraph (3);

(c) details of the schedule of meetings, timetable for preparation of the Nitrogen Management Plan and reporting and review periods; and

(d) the dispute resolution mechanism and confidentiality provisions.

(3) The undertaker must invite representatives from the relevant statutory nature conservation body and the relevant local planning authority for the area in which the mitigation measure is to be delivered to participate in the SMSG.

(4) The SMSG must be consulted on the proposed Nitrogen Management Plan to be approved pursuant to article 52 (procedure for habitat management) prior to the submission to Flintshire County Council under the first unilateral undertaking.

13.—(1) The Nitrogen Management Plan must be in general accordance with the outline NMP and include the following—

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

(b) details of the extent and condition of the existing Atlantic salt meadow vegetation communities within the Saltmarsh Management Area;

(c) details of the locations where the mitigation measure will be delivered and why they are ecologically suitable to meet the aims and objectives of the Nitrogen Management Plan;

(d) details of any consents, licences and approvals required for implementation;

(e) details of any habitat and water management measures to meet the aims and objectives of the plan;

(f) details of access to, and biosecurity of, the locations where the mitigation measure will be delivered;

(g) details of ongoing monitoring and reporting of the effectiveness of the mitigation measure including—

(i) survey methods;

(ii) survey programmes for hydrology, topography, and habitat;

(iii) success criteria;

(iv) adaptive management measures and thresholds used to trigger any adaptive management;

(v) sharing of monitoring data with the relevant Local Environmental Records Centre(s); and

(vi) timescales for monitoring reports to be delivered to the SMSG, Flintshire County Council and the Secretary of State under paragraph 14;

(h) an implementation timetable including details as to how the mitigation measures will be effective at meeting the aims and objectives of the plan; and

(i) details as to how the Nitrogen Management Plan has had regard to the output of consultation with the SSG and the provision of a signed SMSG agreement log recording the same.

14.—(1) Unless otherwise agreed with the Secretary of State,

(a) any party with responsibility for the use of the Saltmarsh Management Contribution, the Supplemental Saltmarsh Management Contribution and any Saltmarsh Indexation Payment for the Saltmarsh Management Purpose pursuant to article 52 (procedure for habitat management) must make the results of any monitoring required pursuant to the Nitrogen Management Plan must be made publicly available and submit them at least annually as a report to the Secretary of State, Flintshire County Council and members of the SMSG; and

(b) if the undertaker, or on receipt of a monitoring report, Flintshire County Council, determines that the mitigation measure delivered has been ineffective at meeting the aims and objectives of the Nitrogen Management Plan, the undertaker must consult the SMSG on any adaptive management measures to address this and submit its proposals to Flintshire County Council for approval.

15. The Nitrogen Management Plan approved under article 52 (procedure for habitat management) includes any amendments that may subsequently be approved in writing by Flintshire County Council. Any amendments to or variations of the approved Nitrogen Management Plan must be in general accordance with the outline NMP and may only be approved where it has been demonstrated to the satisfaction of Flintshire County Council that it is unlikely to give rise to any new or materially different environmental effects from those considered in the environmental statement.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of a new gas-fired power station with carbon capture technology at Connah's Quay, Flintshire. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights. A copy of the plans and book of reference referred to in this Order and certified in accordance with article 45 (certification of plans etc.) may be inspected free of charge on a website maintained by or on behalf of the undertaker.