
STATUTORY INSTRUMENTS

201[*] No.[***]**

INFRASTRUCTURE PLANNING

**The Tidal Lagoon Swansea Bay (Generating Station) Order
201[***]**

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

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The undertaker has applied to the Secretary of State for an order granting development consent in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a).

The application was examined by an examining authority appointed by the Secretary of State under Part 4 of the Planning Act 2008 (the “Act”)^(b).

The examining authority has considered such national planning statements as are or may be relevant to the application and so far as the same are applicable or otherwise important and relevant matters has concluded that the application accords with these statements as set out in section 104(3) of the Act.

(a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012.
(b) 2008 c. 29.

The Secretary of State has considered the effect of the following Order upon land which is open space in accordance with section 131 of the Act and is satisfied that subsections (4A) and/or (4B) of that section apply to such land.

The Secretary of State has considered the effect of the following Order upon land which is open space in accordance with section 132 of the Act and is satisfied that subsections (3), (4A) and (4B) of that section apply to such land.

The Secretary of State as decision-maker has decided to grant development consent and, under section 114 of the Act, to make the following Order—

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as The Tidal Lagoon Swansea Bay (Generating Station) Order 201[*] and comes into force on [***] 201[*].

Interpretation

2.—(1) In this Order—

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

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

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

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

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- (a) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government Planning and Land Act 1990 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1984 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act (c. 21), and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17

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

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

“the 2008 Act” means the Planning Act 2008(c);

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

“AB Ports” means the harbour authorities for the Ports of Swansea and Port Talbot;

“access and public rights of way plans” mean the plans certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

“authorised development” means the development described in Part 1A and Part 1B of Schedule 1 authorised by this Order, being development within the meaning of section 32 of the 2008 Act;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commence” means beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” is to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“demolition plan” means the plans bearing reference 3513/Order/401, 402.1, 402.2 and 402.3 certified as the demolition plan by the Secretary of State for the purposes of this Order;

“design and access statement” means the document with that title submitted with the application for the Order and certified as the design and access statement by the Secretary of State for the purposes of this Order;

“environmental statement” means the environmental statement submitted with the application for the Order and certified as the environmental statement by the Secretary of State for the purposes of this Order;

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

“land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“local planning authority” has the same meaning as in the 1990 Act;

“limits of deviation” means the limits of deviation for the scheduled works comprised in the authorised development shown on the works plans;

“maintain” includes maintain, inspect, repair, refurbish, replace, adjust, alter, and further includes (in respect of any constituent part of any work but not the whole of any work) remove, clear, refurbish, reconstruct, decommission, demolish, replace and improve any part of the authorised development, but is not to include any activity other than that authorised by or pursuant to this Order and which would be EIA development as defined in the

to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.

- (a) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Part 3 of the 1991 Act was amended by Part 4 of the Traffic Management Act 2004 (c. 18). Section 74 was amended, and sections 74A and 74B inserted, by sections 255 and 256 of the Transport Act 2000 (c. 38). There are other amendments to the 1991 Act but they are not relevant to this Order.
- (b) 2004 c. 20.
- (c) 2008 c. 29.
- (d) 2009 c. 23.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(a), and “maintenance” is to be construed accordingly;

“offshore building” means the building centred on grid reference 266218E; 189338N and comprised within Work No. 1a;

“Order land” means the land shown on the land plans which is within the Order limits and described in the book of reference;

“Order limits” means the limits shown on the land and works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(b);

“planning drawings” means the drawings certified by the Secretary of State as planning drawings for the purposes of this Order numbered 2.4.1 to 2.4.58 set out in Schedule 7;

“relevant planning authority” means the City and County of Swansea Council in relation to land in its administrative area and Neath Port Talbot County Borough Council in relation to land in its administrative area, and “relevant planning authorities” means both of them severally;

“requirements” means those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

“scheduled works” means the works specified in part 1A and part 1B of Schedule 1 to this Order;

“sections” means the sections certified by the Secretary of State as the sections for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, 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;

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

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

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

“undertaker” means Tidal Lagoon (Swansea Bay) plc, which is the named undertaker, or any other person who has the benefit of this Order in accordance with section 156 of the 2008 Act for such time as that section applies to that person;

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

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

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

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

(4) Reference points specified in this Order are to be construed as references to Ordnance Survey National Grid reference points.

(5) In this Order the expression “includes” shall be construed without limitation.

(a) S.I. 2009 No. 2263.

(b) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

PART 2

Principal powers

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) The development authorised by this Order must be constructed in the lines or situations shown on the works plans and, subject to the provisions of the requirements, in accordance with the drawings specified in the requirements.

(3) The authorised development must be constructed within the Order limits and, in respect of limits of deviation applicable to specific works as shown on the Works plans, within those limits of deviation.

(4) In constructing or maintaining the scheduled works, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation and subject to the maximum dimensions stated in Part 2 of Schedule 1; and
- (b) deviate vertically from the levels shown on the sections—
 - (i) upwards to the extent shown in Part 2 of Schedule 1 in respect of the buildings listed or otherwise any extent not exceeding 3 metres upwards; or
 - (ii) to any extent downwards as may be found necessary or convenient.

(5) In the case of conflict between the works plans or other drawings and the works as described in Parts 1A and 1B or the maximum dimensions stated in Part 2 of Schedule 1, the description of the works in Schedule 1 shall prevail and the maximum dimensions shall not exceed those stated in part 2 of Schedule 1.

Maintenance and decommissioning of authorised development

4.—(1) Subject to the other terms of this Order, including the requirements, the undertaker may at any time maintain, decommission and/or demolish the authorised development, except to the extent that this Order, or any scheme or agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance of works within the Order limits.

Operation of generating station, other uses and planning permission

5.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

(3) If planning permission is issued pursuant to the 1990 Act for development any part of which is within the Order limits following the publication of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use of operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development pursuant to the terms of that planning permission does not constitute a breach of the terms of this Order.

(4) Where this Order provides for the erection of a building for a specified purpose the building in question may be used for that purpose.

(5) If no purpose is specified, the building may be used for the purpose for which it is designed.

(6) Save as expressly provided in the requirements nothing in this Order shall prevent the use of the authorised development for cultural or sporting purposes.

Benefit of the Order

6.—(1) Subject to paragraph (2) the provisions of articles 9 to 11, 13 to 39 and 49 have effect only for the benefit of the named undertaker and a person who is a transferee or lessee as defined in this article.

(2) The undertaker may, with the 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; or
- (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 agreed between the undertaker and the lessee.

(3) Where an agreement has been made in accordance with paragraph (2), references in this Order to the undertaker, except in paragraph (4), include references to the transferee or lessee.

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

Guarantees in respect of payment of compensation

7.—(1) The authorised development must not be commenced and the undertaker must not begin to exercise the powers of articles 25 to 34 of this Order unless sufficient security (being £10.5 million subject to the provisions of paragraph (5) of this article) has been provided in respect of the liabilities of the undertaker to pay compensation under this Order, which has been approved in writing by the City and County of Swansea Council.

(2) The security referred to in paragraph (1) of this article may include without limitation any or a combination of—

- (a) deposit of a cash sum;
- (b) payment into court;
- (c) an escrow account;
- (d) a bond provided by a financial institution;
- (e) an insurance policy; and/or
- (f) a guarantee by a person of sufficient financial standing not being the undertaker.

(3) The authorised development must not be commenced until the undertaker has provided to the City and County of Swansea Council written evidence (which may comprise a written certificate or certificates given by a professional firm or firms) of—

- (a) the construction contracts in respect of Works No. 1a, 1b and 2a and a contract for the procurement of hydro turbines for installation in Work No. 2a; and
- (b) financial provision to secure the delivery of the works and procurement referred to in paragraph (a),

and the City and County of Swansea Council has provided its written confirmation that it is satisfied as to the sufficiency of such financial provision.

(4) The City and County of Swansea Council is to have no liability to pay compensation for compulsory acquisition of land or otherwise under this provision or any other provision of this Order.

(5) The City and County of Swansea Council may agree the substitution of a different sum to that of £10.5 million referred to in paragraph (1) having regard to the liability of the undertaker to pay compensation pertaining at the time of the approval under this article.

(6) The undertaker is to be liable to the City and County of Swansea Council for the reasonable and proper costs, charges and expenses that the City and County of Swansea Council reasonably may incur or have to pay or which it may sustain in the procurement of legal and/or financial advice in respect of the giving of the statement of satisfaction under paragraph (3) of this article.

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out 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 site) of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) 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 which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement 18 of Part 3 of Schedule 1; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) 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 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

PART 3

Streets

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits between the numbered and lettered points shown on the access and public rights of way plans and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;

(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

(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. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

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

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

(4) Nothing in this article authorises the breaking up or opening of the carriageway of the A483 Fabian Way without the prior written approval of the local highway authority.

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

Temporary stopping up of streets

10.—(1) Subject to sub-paragraph (4) the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified by reference to the letters and numbers shown on the Access and Public Rights of Way Plans in column (3) of that Schedule.

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

- (a) the streets specified as mentioned in paragraph (3) without first consulting the local highway authority; and
- (b) any other street without the consent of the local highway authority which may attach reasonable conditions to any consent including as to notice to be given.

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

(6) Nothing in this article authorises the stopping up of the carriageway of the A483 Fabian Way in the County Borough of Neath Port Talbot without the prior written approval of the local highway authority and the City and County of Swansea Council.

Access to works

11. The undertaker may, for the purposes of carrying out the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 4 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authority

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

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

- (b) the carrying out in the street of any of the works referred to in article 9(1) (street works).
- (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 the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

Supplemental powers

Discharge of water

13.—(1) Subject to requirement 5, requirement 6 and to requirement 11 of Part 3 of Schedule 1, the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, operation or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes 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 to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(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.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall 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.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain 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 any groundwater activity or water discharge activity within the meaning of Regulation 12(1)(b) and Schedule 21 of the Environmental Permitting (England and Wales) Regulations 2010(b) (water discharge activities).

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

(a) 1991 c. 56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2010/675.

(c) 1991 c. 57. Amended by sections 100(1) and 120(1) of, paragraph 128 of Schedule 22 to, and Schedule 24 to the Environment Act 1995 (c. 25).

Protective work to buildings

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

(2) Protective works may be carried out—

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

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

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

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

(5) Before exercising—

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

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 52 (arbitration).

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

(8) Where—

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

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

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

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

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

Authority to survey and investigate the land

15.—(1) The undertaker may for the purposes of this Order enter on any land shown within 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 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 ecological 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.

(2) 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.

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

- (a) must, if so required on 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.

(4) No trial holes 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,

but such consent must not be unreasonably withheld.

(5) 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, in case of dispute, under Part 1 (determination of questions disputed compensation) of the 1961 Act.

PART 5

Tidal works

Application of Marine and Coastal Access Act 2009

16.—(1) The provisions of articles 17 to 20 of this Order are subject to the provisions of Part 4 of the 2009 Act and any licence granted pursuant to that part and are without prejudice to the powers of the Welsh Ministers under that part.

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

Right to Dredge

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

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

(3) The undertaker must consult with AB Ports before exercising the rights conferred on it by this article.

(4) This provision does not confer any power upon the undertaker to deposit dredged arisings in any place and is subject always to the provisions of article 16 of this Order.

Tidal works not to be executed without approval of the Welsh Ministers

18.—(1) Unless its construction has commenced within 5 years of the coming into effect of this Order, no tidal work is to be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Welsh Ministers and subject to any conditions and restrictions imposed by the Welsh Ministers before that work is begun.

(2) Any request for the approval of the Welsh Ministers under paragraph (1) shall be accompanied by written evidence to demonstrate to the satisfaction of the Welsh Ministers that Schedule 5 (protective provisions) have been complied with as respects the tidal work for which approval is being requested.

(3) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition imposed under that paragraph—

(a) the Welsh Ministers may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker, it has failed to take reasonable steps to comply with the requirements of the notice, the Welsh Ministers may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or

(b) if it appears to the Welsh Ministers urgently necessary to do so, the Welsh Ministers may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Welsh Ministers in doing so is to be recoverable from the undertaker.

(4) This article shall not have effect where any tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid more than 5 years after the date of the coming into effect of this Order or if a marine licence under Part 4 of the 2009 Act exists in relation to such tidal work.

Abatement of tidal works abandoned or destroyed

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

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

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Welsh Ministers may

take whatever steps the Welsh Ministers consider appropriate to achieve the result required by the notice; and any expenditure incurred by the Welsh Ministers is to be recoverable from the undertaker.

Survey of tidal works

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

(2) Where either party referred to in paragraph (1) of this article proposes to make any such survey it is to do so in compliance with such reasonable stipulations relating to health, safety, security and/or confidentiality as the undertaker may impose.

Lights on tidal works etc. during construction

21. Subject always to the terms of any marine licence relating to the authorised works, the undertaker must at or near—

- (a) a tidal work, including any temporary work; or
- (b) any plant equipment or other obstruction placed, in connection with the authorised development within the area of seaward construction activity,

during the whole time of construction, reconstruction, extension, enlargement, replacement or relaying, exhibit every night from sunset to sunrise such lights and in periods of restricted visibility, if any, and take such other steps for the prevention of danger to navigation as the Welsh Ministers and AB Ports may from time to time direct.

Provision against danger to navigation

22. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker must as soon as reasonably practicable notify Trinity House and AB Ports and Neath Port Authority and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House or AB Ports or Neath Port Authority within their areas may from time to time direct.

Permanent lights on tidal works

23. After the completion of a tidal work the undertaker must at the outer extremity of it exhibit every night from sunset to sunrise and in periods of restricted visibility such lights, if any, and must take such steps, if any, for the prevention of danger to navigation as Trinity House and/or AB Ports or Neath Port Authority within their areas may from time to time direct.

Safety of Navigation

24.—(1) No marine works comprised in the authorised development shall be commenced until a scheme to secure safety of navigation has been submitted to AB Ports and approved in writing by AB Ports in consultation with Trinity House, the Maritime and Coastguard Agency and the City and County of Swansea Council.

(2) The approved scheme must make provision for—

- (a) promulgation of notice to mariners;
- (b) additional aids to navigation;
- (c) retention of safety vessels during construction;
- (d) installation of protective dolphin piles comprised in Work No. 2c;
- (e) the relocation of any pilot station affected by the authorised development; and

- (f) reasonable marine access to be maintained into and out of the rivers Neath and Tawe including for small craft at high tides;
- (g) circumstances where HM Coastguard should be notified of any matter; and
- (h) an emergency response and co-operation plan.

(3) The authorised development shall be carried out in accordance with the approved scheme from time to time in force unless AB Ports shall agree otherwise.

PART 6

Powers of acquisition

Compulsory acquisition of land

25.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it.

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is to be discharged from all rights, trusts and incidents to which it was previously subject.

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

(4) This article is subject to article 34 (temporary use of land for carrying out the authorised development) and article 35 (temporary use of land for maintaining authorised development).

(5) This article is subject to article 31 (acquisition of subsoil only), article 33 (rights under or over streets) and article 57 (Crown rights).

Power to override easements and other rights

26.—(1) Any authorised activity which takes place on land or which is a tidal work within the Order limits (whether the activity is undertaken by the undertaker, by its successor pursuant to a transfer or lease under article 6 (benefit of the Order) of this Order, by any person deriving title under them or by any of their servants or agents) can be undertaken, notwithstanding that it involves—

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

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

- (a) the erection, construction or carrying out, or maintenance of any building or work on land or over, in or under tidal waters or tidal lands;
- (b) the erection, construction, or maintenance or anything in, on, over or under land or over, in or under tidal waters or tidal lands; or
- (c) the use of any land and/or tidal waters and/or tidal lands,

which is authorised under any other provision of this Order and done in accordance with its terms.

(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 (and include restrictions as to the user of land arising by the virtue of a contract having that effect).

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is abrogated or discharged at the time that the interference or breach in respect of the authorised

activity in question commences but only to the extent required for or necessary or incidental to the authorised development.

(5) In respect of any interference, breach, abrogation or discharge in pursuance of this article, compensation shall be payable under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance), to be determined in case of dispute under Part 1 of the 1961 Act.

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

(7) This article shall not apply—

- (a) in respect of any agreement, restriction, obligation or other provision contained in a deed made pursuant to section 106 of the 1990 Act, or section 278 of the 1980 Act; or
- (b) where any agreement expressly excludes its application.

Private rights of way

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

- (a) 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) of the 1965 Act (power of entry),

whichever is the earlier, but only to the extent required for or necessary or incidental to the authorised development.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plans, is required for the purposes of this Order are extinguished on the appropriation of the land by the undertaker for any of those purposes.

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

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) 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;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker taking temporary possession of it,

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

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

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

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

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

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declarations are to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 30 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 34 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker 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

29.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which a new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired is discharged from all rights trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act as substituted by article 32 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

30.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(b) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect of any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) published in a local newspaper circulating in the area in which the land is situated.

(4) In that section, the subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(5) In that section for subsections (5) and (6) substitute—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

31.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph 25(1) of article 25 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 32 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

32.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat, is to be referred to the tribunal unless the undertaker agrees to take the land subject to the counter-notice.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice is to be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is to be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is to be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

33.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space 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 to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) 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

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary or permanent works (including the provision of means of access) and temporary buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 6 or any other mitigation works.

(2) Not less than 14 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 specifying the purpose of the temporary possession.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article 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 (3) of Schedule 6 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 29 of this Order.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary buildings and works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article or restore the land on which any works have been constructed under paragraph (1)(d).

(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 provisions of any power conferred by this article.

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

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 (1) except that the undertaker is not to be precluded from—

- (a) acquiring new rights over any part of that land under article 29 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 31 (acquisition of subsoil only).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 of the 2008 Act (application of compulsory acquisition provisions).

(11) Subject to paragraph (3), nothing in this article shall prevent the taking of temporary possession more than once in relation to any land specified in Schedule 6.

Temporary use of land for maintaining authorised development

35.—(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 limits 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 temporary buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall 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 shall 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 shall remove all temporary buildings and works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage rising 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 compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply 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 of the 2008 Act (application of compulsory acquisition provisions).

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

Statutory undertakers

36.—(1) The undertaker may for the purposes of article 9 (street works)—

- (a) remove or reposition apparatus belonging to statutory undertakers which is laid beneath the relevant streets; and
- (b) acquire compulsorily a right over the relevant streets.

(2) In this article “relevant streets” means the streets described in column (1) of Schedule 2 to this Order.

For the protection of the Coal Authority

37. This Order does not confer any powers to acquire any coal measures or land in which the Coal Authority has any proprietary estate or interest.

For the protection of riverine fisheries

38.—(1) The undertaker is to pay to the owners, occupiers or persons otherwise having a proprietary right of fishing in streams injuriously affected by the construction, operation or maintenance of the authorised development, or otherwise by the exercise of the powers conferred upon the undertaker by this Order compensation for any damage sustained by such persons by reason of the exercise of the powers conferred upon the undertaker by this Order.

(2) Any person who suffers injurious affection as set out in paragraph (1) above is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Special category land

39.—(1) Upon entry by the undertaker upon the special category land pursuant to either article 25 (compulsory acquisition of land) or article 29 (compulsory acquisition of rights), so much of the special category land as may be required for the purposes of the exercise by the undertaker of the Order rights is to be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article—

“Order rights” means powers or rights exercisable over the special category land by the undertaker under article 25 (compulsory acquisition of land) or article 29 (compulsory acquisition of rights); and

“special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the Book of Reference.

PART 7

Miscellaneous and general

Railway and navigation undertakings

40.—(1) Subject to the following provisions of this article, the undertaker may not under article 9 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or such an authority or to any other person,

except with the consent of the railway undertakers or navigation authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld or delayed.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

Application of landlord and tenant law

41.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) The operation of any agreement to which this article applies is not prejudiced by enactment or rule of law regulating the rights and obligations of landlords and tenants.

(3) Accordingly, no such enactment or rule of law shall 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.

Operational land for purposes of the 1990 Act

42. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause 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, is to be determined under Part 1 of the 1961 Act.

Application of the Energy Act 2004 in relation to decommissioning

44.—(1) Notwithstanding the provisions of section 104(4)(b) of the 2004 Act the authorised development is to be treated as comprising a renewable energy installation for the purposes of that Act.

(2) Irrespective of any other requirement to do so, prior to commencement of operation of any tidal works a programme for decommissioning shall be submitted to the Secretary of State for his approval in writing and shall provide for the regular review of its terms.

(3) The programme for decommissioning the authorised development under the 2004 Act shall provide for the management and maintenance of remaining elements of the authorised development following cessation of operation but in respect of removal of works shall be limited to removal or alteration of Work No 2a of the scheduled works or to measures for removal of sluices and/or turbines within that work.

(4) The programme of decommissioning submitted to the Secretary of State shall make provision for establishment of a fund for maintenance of the authorised development and payment in to that fund from the fiftieth year of operation, together with—

- (a) the purposes for which the contents of that fund shall be applied after decommissioning; and
- (b) the security provided to ensure the availability of the fund and its contents for those purposes.

(5) Operation of the authorised development must not be commenced until the Secretary of State has approved the decommissioning programme.

Development consent obligation

45.—(1) The undertaker may enter into an obligation relating to the authorised development under section 106 of the 1990 Act in respect of any land within the Order limits notwithstanding that the undertaker may not be the owner of such land or any interest in it.

(2) Any obligation to which paragraph (1) applies has effect in respect of land within the Order limits acquired after the date of that obligation—

- (a) from the date of acquisition as if the undertaker had been the owner of the land at the date of the obligation; and
- (b) thereafter shall be enforceable under subsection 106(3) of the 1990 Act and subject to subsection 106(4) of that Act.

(3) Any obligation by the undertaker prior to the date of the Order and expressed to be subject to the terms of these provisions shall have effect as if they were in force at its date.

(4) In this article and article 46 (development consent obligation - enforcement), “obligation” has the same meaning as in section 106 of the 1990 Act.

Development consent obligation - enforcement

46.—(1) Where the undertaker has entered into any obligation, notwithstanding the provisions or effect of sections 1, 106(3) and 106(9)(d) of the 1990 Act the document recording the obligation may specify that a local planning authority, other than the local planning authority within whose area the land bound by the obligation is situated, may enforce the relevant obligation.

(2) The provisions of this article may apply to all or some of the obligations contained in any document entered into by the undertaker under section 106 of the 1990 Act in relation to the authorised development.

Ancient Monuments and Archaeological Areas Act 1979

47. This Order has effect as a consent under the Ancient Monuments and Archaeological Areas Act 1979 in respect of the authorised development irrespective of the date upon which any monument within the Order limits is included in a schedule under that Act.

Licences relating to water, etc.

48.—(1) The requirement under section 25 of the Water Resources Act 1991^(a) to obtain a licence before constructing, altering, repairing or removing any impoundment works does not apply to the authorised development.

(2) No requirement for a permit applies in relation to the discharge of water through the turbines and sluices comprised in the authorised development notwithstanding the effects of regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010^(b).

(3) No requirement to provide screens under section 14 of the Salmon and Freshwater Fisheries Act 1975^(c) applies in respect of the authorised development.

(4) No requirement to construct, alter or operate an eel pass, remove an obstruction or take any other action under regulation 14 of the Eels (England and Wales) Regulations 2009^(d) applies in respect of the authorised development.

(5) No requirement to place an eel screen under regulation 17 of the Eels (England and Wales) Regulations 2009 applies in respect of the authorised development.

Byelaws

49.—(1) The undertaker may from time to time make and enforce byelaws regulating the use and operation of the authorised development, the maintenance of order on and about the authorised development and the conduct of all persons including employees of the undertaker while on and about the authorised development.

(2) Without prejudice to the generality of paragraph (1) byelaws made under this article may provide for—

- (a) regulating the admission and access to the seawall(s) forming part of the authorised development in particular in the vicinity of the Swansea University Bay Campus;
- (b) preventing and removing obstructions or impediments within the authorised development;
- (c) preventing damage or injury to any goods, vehicles, plant, machinery, property or person within the authorised development;
- (d) regulating the activities of divers, surfers, water skiers and other persons engaged in recreational pursuits within the authorised development;
- (e) prohibiting persons in or entering the authorised development from smoking in open spaces; and
- (f) with respect to the prevention of nuisances on the authorised works.

(3) Byelaws made under this article may—

- (a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given under them, fines not exceeding level 3 on the standard scale;
- (b) relate to the whole or to any part of the authorised development; and
- (c) make different provision for different parts of the authorised development or in relation to different classes of vehicles.

(4) Byelaws made by the undertaker under this Order shall only come into operation when they have been confirmed by the Welsh Ministers.

(5) At least 28 days before applying for any byelaws to be confirmed under this article the undertaker must publish a notice of its intention to apply for the byelaws to be confirmed and the place at which and the time during which a copy of the byelaws is to be open to public inspection—

(a) 1991 c. 57.
(b) S.I. 2010 No. 675.
(c) 1975 c. 51.
(d) S.I. 2009 No. 3344.

- (a) once in the London Gazette; and
- (b) once in each of two successive weeks in a local newspaper circulating in the area,

and any person affected by any of the byelaws may make representation on them to the Secretary of State within a period specified in the notice being a period of not less than 28 days.

(6) For at least 28 days before an application is made under this article for byelaws to be confirmed a copy of the byelaws must be kept at the principal office of the undertaker in the area of the authorised development and must at all reasonable hours be open to public inspection without payment.

(7) The undertaker must supply a copy of the byelaws or of part of the byelaws to a person who applies for it on payment of a reasonable charge.

(8) During the period of one month after completion of the publication of any notice required by paragraph (5), any person may make in writing to the Welsh Ministers any objection to or representation respecting the byelaws to which the notice relates.

(9) The Welsh Ministers may confirm with or without modification or may refuse to confirm any of the byelaws submitted under this article for confirmation and may fix a date on which any byelaws so confirmed are to come into effect and if no date is so fixed the byelaws are to come into effect after the expiry of 28 days after the date on which they were confirmed.

(10) The Welsh Ministers may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as the Welsh Ministers may consider appropriate for the purpose of defraying any administrative expenses incurred by the Welsh Ministers in connection with such confirmation.

(11) A copy of the byelaws when confirmed must be printed and deposited at the principal office of the undertaker and must at all reasonable hours be open to public inspection without payment, and the undertaker must at the request of any person supply that person with a copy of any such byelaws on payment of such reasonable sum as the undertaker shall determine.

(12) Byelaws made under this article may be varied or revoked by subsequent byelaws and byelaws made under this article may also vary or revoke any byelaws made under any other provision in respect of the authorised development at any time.

Procedure in relation to certain approvals etc.

50.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989.

Certification of plans etc.

51.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents listed in Schedule 7 for certification that they are true copies of the plans or 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.

Arbitration

52. Any difference under provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Planning, etc. jurisdiction

53.—(1) During the period beginning with the date when this Order comes into effect and ending on the accretion date the area west of the county borough boundary within the Order limits and seaward of mean low water for the purposes of the Control of Pollution Act 1974(a), the Environmental Protection Act 1990(b) and the 1990 Act is annexed to and incorporated within the administrative area of the City and County of Swansea Council but is not so annexed or incorporated for any other purpose.

(2) During the period beginning with the date when this Order comes into effect and ending on the accretion date the area east of the county borough boundary and seaward of mean low water for the purposes of the Control of Pollution Act 1974, the Environmental Protection Act 1990 and the 1990 Act is annexed to and incorporated within the administrative area of the Neath Port Talbot County Borough Council but is not so annexed and incorporated for any other purpose.

(3) On the accretion date—

- (a) the area of the lagoon created by and of the works themselves so far as completed or substantially commenced west of an imaginary line extending the county borough boundary seawards from mean low water is annexed to and incorporated within the administrative area of the City and County of Swansea Council; and
- (b) the area of the lagoon created by and of the works themselves east of an imaginary line extending the county borough boundary seawards in a southerly direction from mean low water is annexed to and incorporated within the administrative area of the Neath Port Talbot County Borough Council,

in each case for the purposes of the 1990 Act but is not so annexed or incorporated for any other purpose.

(4) In this article—

- (a) “accretion date” means the date when the works authorised by the Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect; and
- (b) “county borough boundary” means the boundary between the administrative areas of the City and County of Swansea Council and the Neath Port Talbot County Borough Council.

Harbour jurisdiction

54.—(1) Following completion of construction of Works Nos. 1a, 1b, 2a and 2c the area of those works and the area within and including the tidal lagoon enclosed within those works is to cease to be part of—

(a) 1974 c. 40.
(b) 1990 c. 43.

- (a) the area of jurisdiction of AB Ports as harbour authority for the Port of Swansea and Neath Port Authority as harbour authority for the Port of Neath; and
- (b) the Port of Swansea and the Port of Neath for the purpose of the Port Security Regulations 2009,

and any enactments conferring powers or duties on AB Ports or the Neath Port Authority ceases to apply to those areas excluded from the jurisdiction of a harbour authority under this article.

(2) Where the jurisdiction of a harbour authority abuts any tidal work the tidal waters for the time being abutting that tidal work are comprised within the jurisdiction of that harbour authority.

(3) Where any land within the jurisdiction of AB Ports as harbour authority is subject to a lease to the undertaker, the jurisdiction of AB Ports is suspended for the period from the commencement of the authorised development until the determination of that lease.

(4) Nothing contained in this Order authorises the obstruction or the closure to navigation of the River Tawe or the River Neath.

Saving for Trinity House

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

Protection of Interests

56. Schedule 6 to this Order has effect.

Crown rights

57.—(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 licensee to—

- (a) 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)—
 - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners; or
 - (ii) belonging to Her 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
 - (iii) belonging to a government department or the Welsh Government or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) 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.

Provisions for effect of adaptive environmental management plan

58.—(1) Where any requirement provides for an adaptive environmental management plan and any provision of that plan makes matters of dispute between the undertaker, any relevant planning authority and Natural Resources Wales subject to arbitration under this Order then article 52 (Arbitration) shall apply.

(2) Where under the terms of an adaptive environmental management plan it is necessary for the officers of any relevant planning authority or Natural Resources Wales to attend any meetings of any group or to review any documents the undertaker is liable for the reasonable and proper costs of those officers in respect of those activities.

Signed by authority of the Secretary of State for Energy and Climate Change

	<i>Name</i>
Address	Parliamentary Under Secretary of State
Date	Department for Energy and Climate Change

SCHEDULES

SCHEDULE 1

Article 3

Authorised Development

PART 1A

Authorised Development

A nationally significant infrastructure project being an offshore generating station as defined in sections 14(1)(a) and 15(3) of the 2008 Act comprising—

In Swansea Bay and the City and County of Swansea and the County Borough of Neath Port Talbot

Work No. 1a A western seawall crested by a road and footway commencing at 266417E; 189134N approximately 2700 metres in length and incorporating—

- (a) a low voltage substation;
- (b) provision of and for lighting;
- (c) boating facilities with associated hardstanding, one or more slipways, jetties and access points;
- (d) a landscaped area where the seawall makes landfall including park and landscaping; and
- (e) provision to enable construction of an offshore building containing an administration and engineering suite, operation and maintenance facilities and, a visitor centre and viewing area(s) such provision to comprise sufficient foundation areas, pilings and land form within or upon the seawall.

Work No. 1b An eastern seawall crested by a road and footway commencing at 266420E; 189131N approximately 6800 metres in length and incorporating provision of and for lighting.

Work No. 2a A turbine and sluice gate housing structure located at 266417E; 189134N and 266410E; 189131N, measuring approximately 410 metres in length and 67.5 metres in width containing up to 16 variable speed hydro turbines with a combined nominal generating capacity of 320MW (continuous) and up to 10 sluice gates and incorporating—

- (a) a switch room;
- (b) scour protection;
- (c) associated electrical equipment and transformer(s);
- (d) dividing structure(s) and wingwalls; and

- (e) such infrastructure works or plant as may be necessary for the purposes of the authorised development including gantry cranes.

The above Works Nos. 1a, 1b and 2a are also to incorporate—

- (a) viewing areas; and
- (b) siting location(s) and mounting facilities for works of public art.

Work No. 5a A 275kV grid connection laid underground consisting of three single phase cables and other electric cables connecting Work No. 2a (266120E; 189499N) to 266970E; 191821N;

Work No. 5b A 275kV grid connection laid underground consisting of three single phase cables and other electric cables from Work No. 5a (266970E; 191821N) to the boundary between the administrative areas of the County and City of Swansea and Neath Port Talbot County Borough (269508E, 192884N);

Work No. 5c A 275kV grid connection laid underground consisting of three single phase cables and other electric cables from Work No. 5b at the boundary between the administrative areas of the County and City of Swansea and Neath Port Talbot County Borough (269508E; 192884N) along and/or parallel to Fabian Way to 271434E; 193302N;

Work No. 5d A 275kV grid connection laid underground consisting of three single phase cables from Work No. 5c (271434E; 193302N) to 272209E; 193140N;

Work No. 5e A 275kV grid connection consisting of three single phase cables passing under the River Neath by means of horizontal directional drilling and connecting Work No. 5d (272209E; 193140N) with Work No. 5h (272865E, 192988N); and

Work No. 5f A 275kV grid connection laid underground of three single phase cables from 272865E; 192988N to the existing Baglan Bay substation (273174E; 192477N).

Work No. 6a A work consisting of the construction of a jetty or mole and floating pontoons and piles or dolphins, located from 267494E; 191898N to 266998E; 191498N;

Work No. 6b A work consisting of construction of onshore operation and maintenance facilities comprising—

- (a) the onshore building centred on 267129E; 191741N itself comprising—
 - (i) one or more buildings centred on 267129E; 191741N;
 - (ii) a hatchery(ies) and laboratories;
 - (iii) visitor parking spaces and facilities as shown on the planning drawings;
 - (iv) maintenance workshop(s) and spares store(s);
 - (v) operation and maintenance vehicle parking facilities and garages;
 - (vi) boat storage;
 - (vii) a control room;
 - (viii) office accommodation; and
 - (ix) welfare facilities; and
- (b) also consisting of provisions to allow construction of—
 - (i) outdoor visitor parking spaces and facilities as shown on the planning drawings;
 - (ii) visitor orientation facilities enabling way finding, exhibitions and welfare to be provided to visitors, boat maintenance and storage facilities;
 - (iii) outdoor or indoor emergency access facilities to enable rapid access to the authorised works; and
 - (iv) outdoor visitor orientation facilities enabling way finding,

save that this work shall not comprise any above ground structures shown coloured blue on planning drawing 2.4.47.

Work No. 7a A new internal access road comprising two carriageways together with a fence in between running in a north easterly direction from 267048E; 191928N to 269035E; 192887N;

Work No. 7b A new internal access road comprising two carriageways together with a fence in between running in a westerly direction from Work No. 7a (269035E; 192887N) to 268575E; 192877N;

Work No. 7c A new internal access road comprising two carriageways together with a fence in between running in a north westerly direction from Work No. 7b (268640E; 192886N) to 268088E; 193003N;

Work No. 7d A new internal access road comprising two carriageways, one for the purposes of the Port of Swansea and one for the purposes of the authorised development together with fence in between running in a north westerly direction from Work No. 7c (268088E; 193003N) to 267984E; 193046N;

Work No. 7e A work comprising improvements to the public highway along Langdon Road from 267984E; 193046N to 267975E; 193044N;

Work No. 7f A work comprising improvements to the public highway from Work No. 7e (267975E; 193044N) to the junction of Langdon Road and Fabian Way (267804E; 192987N); and

Work No. 7g A work for a new access track at the eastern seawall landfall running in an easterly direction from 269016E; 192826N to 270275E; 192496N.

and in connection with such works and to the extent that they do not otherwise form part of any such work, further development including mitigation, being part of the nationally significant infrastructure project shown (in the case of permanent works) on the plans referred to in the requirements (including the master plan drawing references 2.4.1 to 2.4.7 and demolition plan) comprising—

- (a) temporary construction works, including storage areas for rock armour, working areas, laydown areas and construction sites;
- (b) waterfront public realm comprised in the Broad Seaward Park, Narrow Seaward Park, Landward Ecological Park and Landward Urban Park as described in the design and access statement including works to existing wave protection walls;
- (c) habitat creation (including mariculture);
- (d) navigational aids;
- (e) internal site roads and vehicle parking facilities;
- (f) temporary workshops and stores as required in the construction of the authorised development;
- (g) bunds, embankments, swales, landscaping and boundary treatments and fencing;
- (h) to the extent shown on the demolition plan, the alteration, removal, clearance, refurbishment, reconstruction, decommissioning and demolition of any buildings and structures within the Order limits;
- (i) the provision of footpaths;
- (j) lighting columns and lighting; and
- (k) safety/emergency points.

PART 1B

Ancillary and necessary works

Works within the Order limits to the extent necessary and ancillary to the construction, operation and maintenance of a nationally significant infrastructure project and forming part of that project being an offshore generating station as defined in sections 14(1)(a) and 15(3) of the 2008 Act

which has been subject to environmental impact assessment recorded in the environmental statement comprising—

Work No. 2b A temporary offshore work consisting of a sediment berm cofferdam for the purposes of constructing Work No. 2a as shown on works plan 2.2.8 and having wall heights not exceeding 16.5 metres above Chart Datum;

Work No. 2c An offshore work comprising up to 15 dolphin piles with lights, cable booms and/or floating buoys in between located up to 500m seaward from the outer edge of Work No. 2a (266113E; 189484N) for the purposes of demarcating a safety zone as shown on works plan 2.2.8 and works section 2.2.16; and

Work No. 2d An offshore work comprising buoys (with or without lights) with or without floating boom(s) located up to 500m landward from the outer edge of Work No. 2a (266123E; 189494N) for the purposes of demarcating a safety zone as shown on works plan 2.2.8 and works section 2.2.16.

Work No. 3 An offshore work consisting of a buried pipeline the uppermost surface of which shall be below the level of the surrounding sea bed for the extension of the existing long sea sewage outfall from 268408E; 189407N to 268030E; 187224N and replacement of diffuser apparatus.

Work No. 4 An offshore work consisting of a new eastern channel training wall in the River Neath providing for the relocation of Monkstone light(s) from 270138E; 190336N to 271033E; 191419N which work shall not exceed the heights shown on works section 2.2.15.

Work No. 9 A work including reclamation of land to establish a saltmarsh habitat area of up to 5ha. and coastal grassland habitat area of up to 3ha including pedestrian and cycle routes and structures at the northern edge of the lagoon adjacent to land as shown on works plans 2.2.2 and 2.2.3.

Work No. 10 A work including reclamation of land to establish a new coastal grassland and dune area of up to 11 ha. close to the landfall of Work No. 1b as shown on works plan 2.2.3 incorporating—

- (a) a beach area;
- (b) a visitor/information point to serve Crymlyn Burrows SSSI as shown on planning drawing 2.4.58; and
- (c) extension of the existing surface drainage outfalls serving Fabian Way,

and to the extent that they do not otherwise form part of any numbered work, further ancillary works comprising—

- (a) oyster spatting ponds;
- (b) installation of services along eastern and western seawalls, including electricity and telecommunications;
- (c) buoys, beacons, fenders and other navigational aids, warning or ship impact protection works;
- (d) temporary land places, moorings and other means of accommodating vessels in the construction of the scheduled works; and
- (e) works to alter the position of apparatus on, over or under tidal waters or tidal lands within the Order limits.

PART 2

Building Heights

(1)	(2)	(3)	(4)
<i>Building</i>	<i>Height (metres) above</i>	<i>Upwards</i>	<i>deviation Maximum</i>

	<i>ordnance datum</i>	<i>(metres)</i>	<i>Width/length</i>
Seawall	9 (14m chart datum)	2m	N/A
Turbine and sluice gate housing structure	11.5 (16.5m chart datum)	2m	128m/410m
Offshore building	28.5 (33.5m chart datum)	2.5m	60m/53m
Onshore building	20m	1m	20m/155m
SSSI building	12m	1m	Refer to drawing 2.4.58
Cranes	22.5 (27.5m chart datum)	2m	N/A

PART 3

Requirements

Interpretation

1.—(1) In this Part of this Schedule—

“AEMP” means the adaptive environmental management plan to be submitted and approved pursuant to requirement 6 below;

“CEMP” means the construction environmental management plan to be submitted and approved pursuant to requirement 5 below;

“CPTMP” means the construction phase traffic management plan to be submitted and approved pursuant to requirement 21 below;

“DCWW” means Dwr Cymru Cyfyngedig (Company Reference Number: 2366777) whose registered office is at Pentwynn Road, Nelson, Treharris CF46 6LY;

“major event” means an event likely to generate vehicular traffic capable of occupying more than the aggregate number of visitor parking spaces within the authorised development;

“NRW” means the Natural Resources Body for Wales;

“OEMP” means the operational environmental management plan to be submitted and approved pursuant to requirement 5 below;

“OPTMP” means the operational phase travel management plan to be submitted and approved pursuant to requirement 22 below;

“operate” means operate the authorised development for generation of electricity for transmission to the national electricity grid following completion of wet commissioning and “operation” and “operating” is to be construed accordingly;

“outline Adaptive Environmental Management Plan” means the outline Adaptive Environmental Management Plan dated 28 October 2014 certified as such by the Secretary of State for the purposes of this Order;

“outline Construction Environmental Management Plan” means the outline Construction Environmental Management Plan dated 4 November 2014 certified as such by the Secretary of State for the purposes of this order;

“outline construction phase traffic management plan” means the outline construction phase traffic management plan annexed to the outline Construction Environmental Management Plan;

“outline Operational Environmental Management Plan” means the outline Operational Environmental Management Plan dated 4 November 2014 certified as such by the Secretary of State for the purposes of this Order;

“outline operational phase traffic management plan” means the outline operational phase traffic management plan submitted with the application certified as such by the Secretary of State for the purposes of this Order;

(2) Where any requirement specifies “unless otherwise approved” by the relevant planning authority such approval must not be given except in relation to minor or immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought or the undertaker’s proposed change is unlikely to give rise to any materially new or materially different effects from those assessed in the Environmental Statement or the findings of the examining authority and the Secretary of State.

Time limits, etc.

2. The authorised development must commence no later than the expiration of five years beginning with the date that this Order comes into effect.

3.—(1) The authorised development must not commence until a construction phasing scheme for the authorised development has been submitted to and approved in writing by the relevant planning authorities. The phasing scheme must set out the sequence of construction of the authorised development and under which requirements approvals are to be sought in whole or in part depending on the contents of the construction phasing scheme.

(2) Where a construction phasing scheme has been submitted to and approved by a relevant planning authority the details to be submitted to the relevant planning authority to discharge any requirement may relate to a particular construction phase only, in order that the construction and/or operation of that phase may commence in accordance with the approved details for that phase alone. Where details have not been submitted in relation to any particular construction phase, then construction of that phase must not commence until the relevant part of any requirement has been discharged in relation to that phase. Construction must then be carried out in accordance with any relevant approval.

Detailed design

4.—(1) The authorised development must be carried out in accordance with the planning drawings and/or the details approved under this requirement.

(2) Except where the authorised development is to be carried out in accordance with the planning drawings, no authorised development may commence until details of the layout, scale, siting, design, dimensions and external appearance of Works No. 1a, 1b, 2a, 6a, 6b, 7a, 7b, 7c, 7d, 7e, 7f, 7g, 8a, 8b, 9 and 10 and ancillary works (a), (c) and (d) comprised in the authorised development so far as they do not accord with the development shown in the planning drawings have been submitted to and approved by the relevant planning authority for the works in question provided that the approved details must accord with the principles of the design and access statement and fall within the Order limits.

(3) Where any alternative details are approved pursuant to this requirement or requirement 39, those details shall be deemed to be substituted for the corresponding approved details set out above.

Construction and Operation Environmental Management Plans

5.—(1) No authorised development is to commence until a CEMP, substantially in accordance with the outline Construction Environmental Management Plan, has been submitted to and approved by the relevant planning authorities in consultation with NRW.

(2) All construction work must be carried out in accordance with the approved CEMP.

(3) No operation of the authorised development is to commence until an OEMP, substantially in accordance with the outline Operational Environmental Management Plan, has been submitted to and approved by the relevant planning authorities.

(4) Operation of the authorised development must be in accordance with the approved OEMP.

Adaptive Environmental Management Plan

6.—(1) No authorised development is to commence until an AEMP, substantially in accordance with the outline Adaptive Environmental Management Plan, has been submitted to and approved by the relevant planning authorities in consultation with NRW.

(2) The approved AEMP must contain provision for the revision from time to time of the monitoring and management measures that it contains in order to achieve the objectives set out in the outline Adaptive Environmental Management Plan.

(3) Construction and operation of the authorised development must be carried out in accordance with the approved AEMP as it subsists from time to time.

(4) The AEMP must include mechanisms for the delivery of mitigation to manage restoratively any adverse impacts resulting from the development, to habitats, species and sediment distributions on the Swansea Bay seafront arising from—

- (a) increases in windblown sand hazards; and
- (b) increases in saltmarsh vegetation.

Provision of landscaping

7.—(1) The authorised development is not to be operated until a detailed landscaping scheme and associated working programme for the authorised development in accordance with the design and access statement has been submitted to and approved by the relevant planning authority for the area in question.

(2) The landscaping scheme must include details of—

- (a) waterfront public realm including works to existing wave protection walls;
- (b) the location, number, species, size and planting density of proposed planting;
- (c) a planting design on and in the vicinity of works 6a and 6b within the Order land;
- (d) any importation of materials and other operations to ensure plant establishment;
- (e) proposed finished ground levels;
- (f) planting and hard landscaping within the operational areas of the authorised development and the vehicular and pedestrian access, parking and circulation areas;
- (g) the new beaches, salt marks and dunesapes to be constructed as part of the authorised development, including the method of construction, plant types, sizing and spacing, and the measures proposed for maintenance of areas;
- (h) minor structures such as signage, refuse or other units, and furniture;
- (i) signage and cycle parking facilities on the access roads proposed as part of the authorised development;
- (j) proposed and existing functional services above and below ground, including power and communications cables and pipelines, manholes and supports;
- (k) the specified standard to which the works will be undertaken maintained and managed;
- (l) the proposed term for which long term management is to be undertaken pursuant to requirement 8(4); and
- (m) a timetable for the implementation of all hard and soft landscaping works.

(3) All planting undertaken pursuant to the landscaping scheme is to comprise:

- (a) species that would also enhance biodiversity and connect habitats; and
- (b) stock of local provenance, where available.

(4) The details to be submitted under paragraph (2) must not include any development or works that are not within the descriptions of the authorised development contained in Schedule 1.

Implementation and maintenance of landscaping

8.—(1) All landscaping works must be carried out in their entirety, maintained and managed in accordance with the detailed written landscaping scheme approved under requirement 7 and to the specified standard.

(2) Any tree or shrub planted as part of the approved detailed landscaping scheme above that is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in accordance with the specified standard of maintenance and management in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

(3) If any boundary shrub or vegetation is the subject of localised clearance for the purpose of construction of the authorised development, replacement planting will be undertaken to replace the extent of vegetation lost using locally occurring species to retain the existing vegetation pattern, unless otherwise approved by the relevant planning authority.

(4) Five years after the commencement of operation of the authorised development a long term management plan in accordance with the principles set out in the landscaping scheme shall be submitted to and approved by the relevant planning authority, and all planting and landscaping must then be managed in accordance with that plan.

Highway works

9.—(1) No phase of the authorised development affecting an existing public highway is to commence until details of the siting, design and layout of the highway works have after consultation with the relevant planning authority and highway authority for the works in question been submitted to and approved by the relevant planning authority.

(2) The highway works must be carried out in accordance with the approved details.

(3) The submitted details are to provide for—

- (a) reinstatement of temporary works upon their completion;
- (b) a site survey to identify pre-existing defects;
- (c) remedy of defects caused during and resulting from the works upon completion; and
- (d) construction of permanent works to adoptable standards.

(4) At any time prior to or in default of the adoption of Work No. 7c or 7d as highway maintainable at the public expense the undertaker is to permit the owners of land abutting such works to make road connections to those works for the purpose of developing and occupying such land subject only to—

- (a) securing planning permission for such connections; and
- (b) payment by such owners to the undertaker of a reasonable proportion of the cost of maintaining and repairing these works until such time as they become highway maintainable at the public expense.

(5) In this requirement “the highway works” means the highway works comprised in Work Nos. 7a, 7b, 7c, 7d, 7e and 7f and any works for provision of a grid connection affecting a highway.

Fencing and other means of site perimeter enclosure

10.—(1) Prior to commencement of each phase of the authorised development, written details of all proposed permanent or temporary fences, walls or other means of enclosure within that phase of the authorised development must be submitted to and approved by the relevant planning authorities.

(2) All construction sites must remain securely fenced at all times during construction of the authorised development in accordance with the approved scheme or schemes.

(3) All temporary fencing must be removed on completion of construction of the authorised development.

(4) All perimeter fences, walls or other means of site perimeter enclosure for the authorised development approved in accordance with paragraph (1) must be completed prior to commencement of operation in accordance with the approved details.

(5) Such fencing must make provision for—

- (a) the secure fencing of the Port of Swansea; and
- (b) fencing and means of access as is required to secure the proper management of access to Crymlyn Burrows Site of Special Scientific Interest from the authorised development.

Operational surface and foul water drainage

11.—(1) No part of the authorised development shall commence until a written scheme to deal with the details of the surface water drainage system and the sewage system (together, the “operational drainage scheme”) incorporating a sustainable urban drainage system so far as appropriate has been submitted to and approved by the relevant planning authority in consultation with the relevant drainage authority.

(2) The operational drainage scheme shall provide for—

- (a) prior to commencement of development a survey to be undertaken to identify existing site drainage within the Order limits including old surface water boreholes, disused draining networks from earlier developments and part-demolished sections of existing drainage and the decommissioning of any surface water drainage network and/or exposed boreholes so identified to the satisfaction of NRW;
- (b) a rainwater harvesting system to be included in the authorised development;
- (c) surface water that has the potential for oil contamination to be passed through oil interceptors;
- (d) measures to avoid risk of spillage of contaminating material;
- (e) the discharge of all aqueous effluents via the drainage system comprised in the authorised development;
- (f) for a system to collect and treat run off from stock piles prior to discharge to the surface water drainage system; and
- (g) the avoidance of any tie-in to drains serving the A483 Fabian Way.

(3) The scheme must be implemented in accordance with the approved details prior to operation of the authorised development.

Contamination and groundwater

12.—(1) Prior to the commencement of each phase of the authorised development a scheme to assess the nature and extent of any contamination on the Order land, and confirmation of whether or not it originates on the Order land must be submitted to and approved by the relevant planning authority. The investigation and risk assessment must be undertaken by competent persons in accordance with Land Contamination: A Guide for Developers and the EA/DEFRA Report CLR11 - Model Procedures for Management of Land Contamination and must be submitted as a written report. The written report is to include—

- (a) a desktop study to identify all previous uses on the Order land and potential contaminants on land and controlled waters. The desktop study must establish a “conceptual site mode” (CSM) identifying all plausible pollutant linkages to be assessed;
- (b) a survey of the extent, scale and nature of contamination;
- (c) an assessment of the potential risks to—
 - (i) human health;
 - (ii) ground waters and surface waters;
 - (iii) adjoining land;

- (iv) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
- (v) ecological systems; and
- (vi) archaeological sites and ancient monuments;
- (d) an appraisal of remedial options, and proposal of the preferred remedial option(s); and
- (e) so far as relevant to land which is the subject of the written report in question, details of how the scheme has taken account of remediation works secured by an agreement under section 106 of the 1990 Act dated 20th November 2009 and made between Neath Port Talbot County Borough Council (1), St Modwen Developments Limited (2), St Modwen Properties PLC (3), BP Chemicals Limited (4) and BP Oil Llandarcy Refinery Limited (5) as well as consultation carried out with Baglan Bay Company Limited (company number 638328).

(2) Prior to the commencement of each phase of the authorised development a remediation scheme to bring the Order land to a condition suitable for the intended use by removing any unacceptable risks to human health, buildings, other property and the natural and historical environment must be submitted to and approved by the relevant planning authority. The remediation scheme must include all relevant works to be undertaken, proposed remediation objectives, remediation criteria and site management procedures. The measures proposed within the remediation scheme must be implemented in accordance with an approved programme of works contained in that scheme.

(3) Prior to operation of the relevant phase of authorised development commencing, a verification report which demonstrates the effectiveness of the agreed remediation works carried out in accordance with this requirement must be submitted to and approved by the relevant planning authority.

(4) In the event that contamination is found at any time when carrying out the authorised development that was not previously identified, work on the affected area must cease immediately and shall be reported in writing to the relevant planning authority. A Desk Study, Site Investigation, Risk Assessment and where necessary a Remediation Strategy must be undertaken in accordance with Land Contamination: A Guide for Developers. The Desk Study, Site Investigation, Risk Assessment and any Remediation Strategy shall be submitted to and approved by the relevant planning authority. Prior to operation of the development, a verification report which demonstrates the effectiveness of the approved remediation, shall be submitted to and approved by the relevant planning authority.

(5) In this requirement “Land Contamination - A Guide for Developers” means the document entitled Land Contamination: A Guide for Developers (WLGA, WAG & EAW, 2012).

Storage of liquids on site

13.—(1) No part of the authorised development is to be brought into use until a written scheme to deal with handling and onsite storage of process chemicals, cleaning substances, fuels, oils and lubricants on site has been submitted to and approved by the relevant planning authorities.

(2) All such materials must be stored in accordance with the approved scheme.

Construction water supply

14. No part of the authorised development is to be commenced until a building water supply licence has been granted by DCWW for construction of the authorised development.

Electrical grid connection works

15.—(1) No part of Works No. 5a to 5j is to be commenced until—

- (a) details of the buried depths of the cable comprised in those works according with the recommendations contained in the ERA report; and

- (b) a scheme and programme for the works, including necessary construction details and locations of laydown areas, with details of specific ecological mitigation; and
- (c) a scheme for the restoration monitoring and aftercare of areas of land disturbed by the construction of those works upon their completion including providing for the areas to be suitable for access by the public,

has been submitted to and approved by the relevant planning authority.

(2) Works No. 5a to 5j shall be carried out in accordance with the approved details and scheme.

(3) In this requirement, the “ERA report” means ERA report 2015 - 0265 certified as such by the Secretary of State for the purposes of this Order.

Archaeology

16.—(1) No part of the authorised development in any phase is to commence until a programme of archaeological work including a written scheme of investigation has been submitted to and approved by the relevant planning authorities following consultation with Cadw. The written scheme of investigation is to include an assessment of significance and research questions appropriate for investigation; and—

- (a) a programme and methodology of site investigation and recording having regard to the on- and offshore nature of the authorised development;
- (b) a programme for post investigation assessment;
- (c) provision for analysis of the site investigation and recording, as well as retention of historic assets *in situ* where reasonably practicable;
- (d) provision for publication and dissemination of the analysis and records of the site investigation;
- (e) provision to be made for archive deposition of the analysis and records of the site investigation; and
- (f) nomination of a competent person or persons/organisation to undertake the works set out within the written scheme of investigation.

(2) No part of the authorised development is to take place other than in accordance with the written scheme of investigation approved under paragraph (1) of this requirement.

(3) The site investigation and post investigation assessment are to be completed in accordance with the programme set out in the written scheme of investigation approved under paragraph (1) and provision is to be made in the written scheme of investigation for analysis, publication and dissemination of results and archive deposition.

Retention of historic assets

17.—(1) No part of the authorised development is to commence until a written scope of work required for the retention (where reasonably practicable), or (as the case may be in relation to item (b) below) relocation, and enhancement of identified historic assets, including in particular—

- (a) the standing pill boxes, gun emplacement and tank traps situated seaward of Queen’s Dock Swansea, with a buffer zone of approximately 5 metres, together with suitable landscape treatment; and
- (b) the navigation light situated on the existing Swansea Harbour East Pier,

has been submitted to and approved by the relevant planning authority in consultation with Cadw and the Glamorgan-Gwent Archaeological Trust Ltd.

(2) The authorised development is to be carried out in accordance with the approved details.

Monitoring of noise during construction

18. No part of the authorised development is to commence until a written scheme providing for the monitoring of noise generated during the construction of the authorised development has been submitted to and approved by the relevant planning authorities. The scheme shall specify the locations at which noise will be monitored, the method of noise measurement (which shall accord with BS 5228 or, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances) and the frequency of submission of data to the relevant planning authority. The authorised development shall be carried out in accordance with the approved scheme.

Piling

19.—(1) No piling activities relating to those works shown on drawing TLP - SWANSEA BAY - 141003 - VO.2 as certified by the Secretary of State are to commence until a piling method statement according with the annotations of that drawing has been submitted to and approved by the relevant planning authorities.

(2) Piling shall be carried out in accordance with the approved method statement.

Site waste management plan

20. No part of the authorised development shall be constructed until a plan for the management and disposal of waste produced as a result of the construction of the authorised development has been submitted to and approved by the relevant planning authorities. The construction of the authorised development shall be carried out in accordance with the approved details.

Construction traffic

21.—(1) No part of the authorised development shall commence until a construction phase management plan has been submitted to and approved in writing by the relevant planning authorities.

(2) The CPTMP shall make provision for—

- (a) importation of rock armour and sediment for the authorised works only by sea;
- (b) the public dissemination of contact details for any co-ordinator appointed in respect of the CPTMP;
- (c) avoidance of access via junctions A9 or A10; and
- (d) avoidance of Heavy Goods Vehicles entering and leaving the development site between the hours of 0800-0900 and 1600-1730.

(3) All construction work shall be carried out in accordance with the approved CPTMP.

Operational traffic

22.—(1) The authorised development shall not be operated until a OPTMP, substantially in accordance with the outline operational phase traffic management plan, has been submitted to and approved by the relevant planning authorities.

(2) The approved OPTMP shall make provision for the installation of and collection of data from a suitably located automatic traffic counter.

(3) The authorised development shall be operated in accordance with the approved OPTMP.

Major events

23.—(1) No major event shall be held at the authorised development until an overarching Major Event Strategy (“MES”) has been submitted to and approved by the relevant planning authorities.

(2) The MES shall also make provision for—

- (a) prior consultation with the relevant planning authority, highway authority, Welsh Ministers and Police as well as the Maritime and Coastguard Agency and RNLI, so far as appropriate;
 - (b) submission of subsidiary event-specific Major Event Plans;
 - (c) management of pressures on Swansea Beaches and Crymlyn Burrows SSSI (to the extent appropriate);
 - (d) any co-ordination of other licensing requirements;
 - (e) management of travel and traffic; and
 - (f) responsibility for provision of off-site parking and transport between any off-site parking and the authorised development.
- (3) Any event-specific Major Event Plan must include:
- (a) an explanation of why the event constitutes a major event;
 - (b) expected number of attendees, participants, competitors, exhibitors and spectators and their expected mode(s) of travel;
 - (c) proposed arrangements for the management of vehicular and pedestrian access, including details of off-site parking, any proposed temporary provision of park and ride facilities, drop off and pick up arrangements together with amenity facilities at such locations;
 - (d) details of any proposed temporary road closures or other traffic management required;
 - (e) proposed car and coach parking arrangements;
 - (f) details of liaison proposed to be or held with the police and other relevant first responder services;
 - (g) details of measures to control visitor movement and other activity with respect to Crymlyn Burrows SSSI and any designated quiet bird area; and
 - (h) the proposed access signage and advertising strategy for each event.
- (4) All major events held at the authorised development shall be held in accordance with the approved MES and any event-specific Major Event Plan.

Construction and security lighting scheme

24.—(1) No phase of the authorised development shall commence until a detailed written construction and security lighting scheme in accordance with the design and access statement has been submitted to and approved by the relevant planning authorities.

- (2) The construction and security lighting scheme shall provide for—
- (a) appropriate lighting of any safety zone in place and/or dredging activity taking place during construction;
 - (b) the avoidance of direct light spill onto open water within the authorised development including the use of fencing to minimise light spill and avoidance of the use of white mercury lamps;
 - (c) the minimisation of light spill, including the use of directional lighting and positioning of lights, baffles, cowls and hoods; and
 - (d) measures to ensure that any such lighting will be directional and sensitive to relevant ecological receptors.

(3) Construction of the authorised development must be carried out in accordance with the approved scheme.

Permanent lighting

25.—(1) No permanent lighting forming part of the authorised development shall be installed in any phase until a detailed written and illustrated permanent lighting scheme substantially in

accordance with the principles contained in the design and access statement has been submitted to and approved by the relevant planning authorities.

- (2) The permanent lighting scheme shall provide for—
 - (a) details of how the lighting design will minimise trespass, glare and spillage;
 - (b) development of appropriate lighting to render the authorised development appropriate to Swansea Bay and its setting; and
 - (c) details of how, where possible, operational lighting will be designed to minimise impacts on relevant ecological receptors as described in the environmental statement.
- (3) The approved scheme shall be implemented as part of the authorised development.

Enhancement of flood defences

26.—(1) No tidal works comprised in the authorised development are to commence until a scheme of mitigation works for the flood risk area at Mumbles has been submitted to and approved in writing by the relevant local planning authority following consultation with Natural Resources Wales.

(2) Construction of Works No. 1a, 2a, and 2b shall not commence until the approved scheme of mitigation works for the flood risk area at Mumbles, as referred to in paragraph (1) above, has been completed.

Fish and shellfish mitigation strategy

27.—(1) No part of the authorised development is to commence until a written strategy for the mitigation of the impacts of the authorised development on fish and shellfish has been submitted to and approved by the relevant local planning authority in consultation with NRW and the relevant Port Health Authority.

- (2) The fish and shellfish mitigation strategy shall provide for—
 - (a) fish spawning enhancements by introduction of spawning media at locations including the western face of Work No. 1a; and
 - (b) targeted oyster dredge trawls to be undertaken of the proposed dredging area(s) prior to commencement of construction and the translocation of native oysters;
- (3) In relation to herring the approved scheme shall provide:
 - (a) for the placing of spawning media under paragraph (2)(a) above in the first year of construction of the Project;
 - (b) for the monitoring of the areas where spawning media are placed in the second and third year of construction and thereafter in accordance with frequencies determined under the AEMP; and
 - (c) whether herring spawn within the lagoon created by the authorised development and where spawning does not take place in areas where spawning media are placed and does take place within the lagoon then the scheme shall provide for the installation and operation of acoustic fish deterrent devices calibrated to be effective on herring.
- (4) In relation to sea trout the approved scheme is to provide for modelling of turbines selected for installation in the authorised development applying individual based modelling for the finalised turbine/slucice gate configuration using the STRIKER™ v4 model and where the modelling of effects of the selected turbine on sea trout predicts a level of mortality greater than 2% the scheme is to provide for installation and operation of acoustic fish deterrent (“AFDs”) devices calibrated to be effective on hearing generalist fish species including sea trout. The scheme shall include—
 - (a) monitoring of turbine impacts upon fish populations including migrators fish and clupeids;
 - (b) monitoring the effectiveness of AFDs;
 - (c) measures to be taken when AFDs are non-operational; and

(d) provision for review and adaptation of AFDs during the life of the authorised development.

(5) The provisions of this requirement are to take precedence over the provisions of the AEMP except where an iteration of the AEMP in accordance with the terms of this Order permits.

(6) The approved fish and shellfish mitigation strategy and any measures thereunder are to be implemented and maintained during construction and operation of the authorised development.

Avian enhancement strategy

28.—(1) No part of the authorised development is to commence until a written strategy of enhancement measures for avian species has been submitted to and approved by the relevant planning authorities in consultation with NRW.

(2) The bird enhancement strategy shall provide for—

- (a) provision of an artificial roost within a less disturbed area of the authorised development; and
- (b) provision of kittiwake ledges on north eastern front of new turbine and sluice gate housing structure.

(3) The approved strategy and any measures thereunder are to be implemented and maintained during construction and operation of the authorised development.

Habitats creation strategy

29.—(1) No phase of the authorised development is to commence until a written strategy for the creation, monitoring and management of onshore habitats in that phase has been submitted and approved by the relevant planning authorities.

(2) The habitats creation scheme is to provide for—

- (a) creation of artificial dunescape at the base of existing coastal defences and management to reduce impact through public access;
- (b) creation of an artificial sandy beach at eastern landfall of the authorised development;
- (c) beach landscaping and design on western side of the eastern landfall of the authorised development to reduce wind effect;
- (d) vegetation management to create areas of bare sand and physical intervention to create blow-outs;
- (e) retention of habitat strips of at least 3 metres in width associated with the grassland in the lea of existing seawall(s) south east of Queen's Dock;
- (f) creation of grassland along the landward side of the new saltmarsh area comprised in the authorised development following removal of the existing seawall;
- (g) encouraging colonisation of existing rock armoured sea defences through infilling of large gaps with aggregate and localised topping with sandy spoil/topsoil;
- (h) creation of a dedicated coastal grassland plot to the seaward side at the south-eastern end of the docks estate with a transition to saltmarsh habitat as well as connectivity to dune habitat towards the east;
- (i) creation of grassland at the periphery of parking bays at the western end of the authorised development;
- (j) translocation of grassland turves and reuse of topsoil from areas of species-rich sward to encourage the establishment of coastal grassland habitat in the newly created areas with plants of local provenance;
- (k) translocation of robust plants or substrates containing target species seeds to holding areas where they can be relocated to newly created habitats on new seawalls; and
- (l) creation of purpose-designed artificial rocky shore habitat on new seawalls.

(3) The approved habitats creation strategy and any measures thereunder is to be implemented in their entirety and maintained during operation of the authorised development.

Honeycomb worm translocation strategy

30.—(1) No part of the authorised development shall be commenced until a written strategy for the translocation of the honeycomb worm (*Sabellaria alveolata*) has been submitted to and approved by the relevant planning authority.

(2) The honeycomb worm translocation strategy is to provide for—

- (a) a method statement for the translocation effort;
- (b) identification of temporary and/or permanent receptor sites;
- (c) translocation of casts to encourage future settlement to locations around the new seawalls; and
- (d) provision of rockpools and features similar to bio-blocks to provide biodiversity offset.

(3) The approved honeycomb worm translocation strategy and any measures thereunder are to be implemented and maintained during construction and operation of the authorised development.

Other ecological matters

31.—(1) No part of the authorised development is to be commenced until a written strategy to secure the removal and/or management of Japanese Knotweed and other invasive non-native species within areas affected by the authorised development has been submitted to and approved in writing by the relevant planning authorities.

(2) The approved measures are to be implemented during construction and operation of any part of the authorised development.

Protected canal route

32.—(1) No authorised development is to commence in respect of Works No.7c, 7d and/or 7f until a written scope of work required for the protection, or accommodation, of the proposed canal route corridor linking from the Tennant Canal to the navigable section of the River Tawe has been submitted to and approved by the relevant planning authority.

(2) All construction work in respect of Works No.7c, 7d and/or 7f is to be carried out in accordance with the approved scope of work.

Passive provision for western link

33.—(1) No authorised development is to commence in respect of Work No. 6b until a scheme for safeguarding a future access to the Order land via the eastern bank of the River Tawe has been submitted to and approved by the relevant local planning authority

(2) The authorised works are to be carried out in accordance with the approved scheme.

Parking Provision

34. Neither the visitor centre to be constructed on Work No. 1a nor the facilities to be constructed at Works No. 6a and 6b that are intended to be used by members of the public are to be brought into use until parking for cars, cycles and coaches has been laid out in accordance with the planning drawings or approved under requirement 4 above.

Disposal of dredged arisings and protection of Kenfig SAC

35.—(1) Operation of the authorised development must not commence until a scheme for the disposal of dredged arisings relating to maintenance of depths within the lagoon formed by the

authorised works (“maintenance arisings”) has been submitted to the relevant planning authorities, in consultation with NRW, and approved in writing.

(2) Following commencement of the dredging referred to in paragraph (1) of this requirement, disposal of maintenance arisings must not take place except in accordance with a scheme approved under paragraph (1) and/or a marine licence for such disposal granted by NRW (or equivalent).

(3) Any scheme approved under this requirement may provide for—

- (a) disposal of maintenance arisings at Swansea Outer disposal ground (LU130); or
- (b) disposal of maintenance arisings at another disposal ground.

(4) Where the scheme approved under this requirement relates to disposal of maintenance arisings at Swansea Outer disposal Ground, the approved scheme is to make provision for—

- (a) the collection or augmentation of baseline data for a period of 2 years prior to the commencement of disposal of maintenance arisings in relation to the presence of sand, mud and muddy sand adjacent to the Kenfig shoreline between the Northern Edge of Margam Moors and Sker Point (“Kenfig Shoreline”);
- (b) a programme of monitoring designed to predict and/or to identify departure from predicted change to the Kenfig Shoreline as a result of the deposit of maintenance arisings;
- (c) mitigation by the undertaker to prevent or remedy adverse change to the Kenfig Shoreline (which could lead to adverse effects on the Kenfig Special Area of Conservation) as a result of the deposit of maintenance arisings by the undertaker, which may include but need not be limited to the use of an alternate disposal ground in parallel with or in substitution for the use of Swansea Outer disposal ground particularly where other mitigation measures are not available or appropriate for preventing such effects; and
- (d) triggers in response to which mitigation will be secured by the undertaker in the event of change to the Kenfig Shoreline in relation to—
 - (i) erosion rate of the sand dune toe;
 - (ii) the profiles of the sand body in frontal dunes (between the seaward toe and a fixed line twenty metres inland) at intervals identified in the scheme as well as sedimentary characteristics; and
 - (iii) volumes of sand in the area from mean low water to the dune toe, and position of tidal contours on the beach.
- (e) the review of the scheme and the triggers described above in light of the results of monitoring and other events in accordance with the AEMP referred to in requirement 6 of this Order.

(5) Nothing in paragraph (3) of this requirement shall prevent the undertaker from using or relying upon any scheme of that nature promoted by others relating in whole or in part to the protection or monitoring of the Kenfig SAC.

Beach mitigation management

36.—(1) Operation of the authorised development is not to commence until a beach mitigation management strategy for North West Swansea Bay has been submitted to and approved by the relevant planning authority following consultation with NRW.

(2) The approved strategy, which may comprise part of the AEMP is to include provision for—

- (a) continued regular monitoring of beaches in North West Swansea Bay throughout the operational, decommissioning and post-decommissioning of the authorised development;
- (b) identification of thresholds for the application of mitigation measures; and
- (c) flexibility to select the most appropriate mitigation measures from identified options which may include sediment nourishment, sand or mud removal, vegetation removal or

spraying, and construction of sand fencing or other form of physical barrier to control wind-blown sand.

(3) The approved scheme is to be implemented by the undertaker during the operation, decommissioning and post-decommissioning phases of the authorised development.

Requirement for written approval

37. Where under any of the above requirements the approval or agreement of the relevant planning authority or any other party is required, that approval or agreement must be provided in writing.

38. Where approval or agreement is sought in relation to requirements 26, 27, 35 and 36 approval must only be given by the relevant planning authority following consultation with NRW.

Amendments to approved details

39. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or authorities the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority or authorities.

SCHEDULE 2

Streets Subject to Street Works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street work</i>
City and County of Swansea	Langdon Road between X1 and X2 Port access road between X3 and X4 Port access road between X4 and X5 Port access road from X4 to Baldwin's Bridge off slip and link road and Fabian Way eastwards from the junction between the two to X6
Neath Port Talbot County Borough	Fabian Way between X6 and X7 Fabian Way between X7 and X8

SCHEDULE 3

Article 10

Streets to be Temporarily Stopped Up

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Neath Port Talbot County Borough	Fabian Way	Between X6 and X7
	Fabian Way	Between X7 and X8
	Wales Coast Path footpath	Between X9 and X10

SCHEDULE 4

Article 11

Access to Works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Access reference on Works Plans</i>
City and County of Swansea	Access A1 (permanent) Access A2 (permanent) Access A3 (permanent) Access A4 (construction) Access A5 (construction) Access A6 (permanent) Access A7 (permanent) Access A8 (permanent)
Neath Port Talbot County Borough	Access A9 (permanent) Access A10 (construction) Access A11 (construction) Access A12 (construction) Access A13 (construction)

SCHEDULE 5

Article 31

Protective Provisions

PART 1

For the protection of Associated British Ports

Interpretation

1. In this part of this Schedule—

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation at or in the approaches to the harbours;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, or the carrying out of an operation and “construct” and “constructed” are to be construed accordingly;

“erosion” means any erosion of the bed or banks of the sea or of any jetty or other structure of whatever nature within the harbours or the approaches to the harbours;

“the harbours” means the ports of Swansea and Port Talbot;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements and hydraulic information;

“port land” means any land held by AB Ports for the purpose of its statutory undertaking;

“specified work” means any tidal work and any work or operation authorised by the Order on port land or which may affect port land or navigation in respect of the harbours and/or the functions of AB Ports in relation to the operation of the harbours; and

“tidal work” includes dredging authorised by this Order or any marine licence granted under the 2009 Act relating to the authorised works.

General

2. For the protection of AB Ports in relation to the harbours the following provisions have effect unless otherwise agreed in writing between the undertaker and AB Ports.

Acquisition or use of port land

3.—(1) The undertaker must not under the powers of this Order acquire or use, or acquire new rights over, port land without the consent of AB Ports.

(2) The undertaker must not exercise powers conferred by article 15 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any port land without the consent of AB Ports.

(3) Articles 26 (Power to override easements and other rights) and 36 (Statutory undertakers) do not apply to any rights held by AB Ports for the purpose of its statutory undertaking, except with the consent of AB Ports.

(4) The consent of AB Ports under this paragraph must not be unreasonably withheld but may be given subject to reasonable conditions.

Approval of plans and arrangements

4.—(1) Before commencing the construction of any specified work the undertaker must furnish to AB Ports plans of that work for its approval.

(2) Before decommissioning the generating station comprised in the authorised development the undertaker must furnish to AB Ports for its approval proposed arrangements for the removal or retention of the authorised development and for making it safe and managing it after it has ceased to be used for the generation of electricity.

(3) Any approval of AB Ports under this paragraph—

- (a) must not be unreasonably withheld;
- (b) may be given subject to such reasonable requirements as AB Ports may make for the protection of the harbours and navigation within the harbours and the approaches to the harbours, including requirement for the undertaker to carry out protective works at its own expense.

(4) The undertaker must—

- (a) carry out any specified work and any protective works required under sub-paragraph (3) in accordance with the plans approved under sub-paragraph (1) or settled under article 52 (arbitration); and
- (b) comply with any arrangements approved under sub-paragraph (2) or settled under article 52 (arbitration).

(5) If AB Ports fails to express its disapproval of any plans or arrangements within 56 days after they have been delivered to it under sub-paragraph (1) or (2), it is deemed to have approved them.

Notice of works

5. The undertaker must give to AB Ports not less than 56 days' written notice of its intention to commence the construction of the specified work and, not more than 14 days after completion of such construction, must give to AB Ports written notice of such completion.

Inspection

6. The undertaker must at all reasonable times during construction of a specified work and thereafter allow AB Ports, its servants and agents, access to such work and all reasonable facilities for inspection of any such work subject always to the reasonable stipulations of the undertaker relating to health, safety, security and confidentiality.

Temporary works

7.—(1) After the purpose of any temporary works has been accomplished the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from AB Ports requiring the undertaker so to do, remove any such temporary works or any materials relating thereto which may have been placed on port land or below the level of high water within the harbours or the approaches to the harbours by or on behalf of the undertaker.

(2) If the undertaker fails to do so within a reasonable period after receiving such notice, AB Ports may remove the same and may recover the reasonable costs of doing so from the undertaker.

Erosion or accumulation

8.—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion the undertaker, if so requested by AB Ports acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction and, if it refuses or fails to do so, AB Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraphs (1) above—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as AB Ports reasonably requires.

(3) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 12(1)(b) of this Part of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

Lighting etc

9. The undertaker shall pay to AB Ports the reasonable costs of such alterations to the marking and lighting of the harbours and the approaches to the harbours as may be necessary in consequence of the construction of a tidal work.

Abandoned or decayed works

10.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order is abandoned or falls into decay, insofar as it affects or otherwise impacts upon the operation of the harbours or navigation in the approaches to the harbours, AB Ports may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as AB Ports reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation, AB Ports may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the undertaker so elects, to remove the tidal work and (to such extent as AB Ports reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, AB Ports may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(4) This provision shall not apply where any work is being managed and operated in accordance with any approval given by AB Ports or by any programme approved by the Secretary of State to which article 44 (application of the Energy Act 2004) applies.

(5) In the event of a difference or dispute between the undertaker and AB Ports as to the necessity of any steps or works specified in a notice by AB Ports under this paragraph such difference or dispute shall be determined by arbitration in accordance with article 52 (arbitration).

Byelaws

11. The undertaker must consult AB Ports not less than 42 days before making any byelaw under article 49 (byelaws) and shall not make any byelaw which in the reasonable opinion of AB Ports conflicts with any byelaws made by AB Ports or with any powers exercisable by AB Ports or a harbour master of AB Ports for the regulation of navigation at the harbours or the approaches to the harbours.

Indemnity

12.—(1) Without prejudice to the other provisions of this part of this Schedule, the undertaker is to be responsible for, and make good to AB Ports, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to AB Ports by reason of or arising from or in connection with—

- (a) the perusal of plans and navigation schemes and the inspection of the specified work by AB Ports or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within the harbours and the approaches to the harbours —
 - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal work in such area of the river as AB Ports has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 8; and
 - (ii) where AB Ports has reasonable cause to believe that the construction of any of the tidal work is causing or has caused any such accumulation or erosion;
- (c) the construction or failure of the specified work, or the undertaking by AB Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of AB Ports arising from such construction or failure including—
 - (i) any additional costs of dredging incurred by AB Ports as a result of contamination of the seabed caused by the construction of the specified work; and
 - (ii) any damage to the lock gates or damage from flooding caused by increased wave reflection as a result of the construction of the specified works;
- (d) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of any of the specified work.

(2) Without prejudice to the generality of sub-paragraph (1), the undertaker must indemnify AB Ports from and against all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of AB Ports or of any person in its employ or of its contractors or agents.

(4) AB Ports must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

13. The fact that any work or thing has been executed or done with the consent of AB Ports and in accordance with any conditions or restrictions prescribed by AB Ports or in accordance with any plans approved or deemed to be approved by AB Ports or to its satisfaction or in accordance

with any directions or award of any arbitrator or in accordance with any plans approved by the Welsh Ministers and any conditions or restrictions imposed by him, does not relieve the undertaker from any liability under the provisions of this part of this Schedule.

14. With the exception of any duty owed by AB Ports to the undertaker expressly provided for in the foregoing provisions of this part of this Schedule, nothing in this Order is to be construed as imposing upon AB Ports, either directly or indirectly, any form of duty or liability to which AB Ports would not otherwise be subject which is enforceable by proceedings before any court.

Statutory functions

15. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, AB Ports at the commencement of this Order.

Arbitration

16. Any difference or dispute arising under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and AB Ports, be determined by arbitration in accordance with article 52 (arbitration).

PART 2

For the protection of Neath Port Authority

Interpretation

17.—(1) In this part of this Schedule—

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation at or in the approaches to the harbour including but not limited to accumulations against work No. 1b;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, or the carrying out of an operation and “construct” and “constructed” are to be construed accordingly;

“erosion” means any erosion of the bed or banks of the sea or of any jetty or other structure of whatever nature within the harbours or the approaches to the harbours;

“the harbour” means the Port of Neath;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements, hydraulic and bathymetric survey information and risk assessment;

“protected person” means the Neath Port Authority;

“specified work” means any tidal work and any work or operation authorised by the Order which is likely to affect navigation in respect of the harbour and/or the functions of Neath Port Authority in relation to the operation of the harbour; and

“tidal work” includes dredging authorised by this Order or any licence granted under the 2009 Act relating to the authorised works.

General

18. For the protection of Neath Port Authority in relation to the harbour the following provisions shall have effect unless otherwise agreed in writing between the undertaker and Neath Port Authority .

Approval of plans and arrangements

19.—(1) Before commencing the construction of any specified work the undertaker must furnish to Neath Port Authority plans of that work for its approval.

(2) Any approval of Neath Port Authority under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) may be given subject to such reasonable requirements as Neath Port Authority may make for the protection of the harbour and navigation within the harbour and the approaches to the harbour, including requirement for the undertaker to carry out protective works at its own expense.

(3) The undertaker must—

- (a) carry out any specified work and any protective works required under sub-paragraph (2) in accordance with the plans approved under sub-paragraph (1) or settled under article 52 (arbitration); and
- (b) comply with any arrangements approved under sub-paragraph (2) or settled under article 52 (arbitration).

(4) If Neath Port Authority fails to express its disapproval of any plans or arrangements within 56 days after they have been delivered to it under sub-paragraph (1) or (2), it will be deemed to have approved them.

Notice of works

20. The undertaker must give to Neath Port Authority not less than 56 days' written notice of its intention to commence the construction of the specified work and, not more than 14 days after completion of such construction, must give to Neath Port Authority written notice of such completion.

Inspection

21. The undertaker must at all reasonable times during construction of a specified work and thereafter allow Neath Port Authority, its servants and agents, access to such work and all reasonable facilities for inspection of any such work subject always to the reasonable stipulations of the undertaker relating to health, safety, security and confidentiality.

Temporary works

22.—(1) After the purpose of any temporary works has been accomplished the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Neath Port Authority requiring the undertaker so to do, remove any such temporary works or any materials relating thereto which may have been placed below the level of high water within the harbour or the approaches to the harbour by or on behalf of the undertaker.

(2) If the undertaker fails to do so within a reasonable period after receiving such notice, Neath Port Authority may remove the same and may recover the reasonable costs of doing so from the undertaker.

[Erosion or accumulation

23.—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion within the harbour or approaches to the harbour that is likely to be detrimental to navigation, the undertaker, if so requested by Neath Port Authority acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction and, if it refuses or fails to do so, Neath Port Authority may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraphs (1) above—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as Neath Port Authority reasonably requires.

(3) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 10(1)(b) of this Part of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.]

Lighting etc

24. The undertaker shall pay to Neath Port Authority the reasonable costs of such alterations to the marking and lighting of the harbour and the approaches to the harbour as may be necessary in consequence of the construction of a tidal work.

Abandoned or decayed works

25.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order is abandoned or falls into decay, insofar as it affects or otherwise impacts upon the operation of the harbour or navigation in the approaches to the harbours, Neath Port Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as Neath Port Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation, Neath Port Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the undertaker so elects, to remove the tidal work and (to such extent as Neath Port Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, Neath Port Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(4) This provision shall not apply where any work is being managed and operated in accordance with any approval given by Neath Port Authority or by any programme approved by the Secretary of State to which article 44 (decommissioning) applies.

(5) In the event of a difference or dispute between the undertaker and Neath Port Authority as to the necessity of any steps or works specified in a notice by Neath Port Authority under this paragraph such difference or dispute shall be determined by arbitration in accordance with article 52 (arbitration).

Indemnity

26.—(1) Without prejudice to the other provisions of this part of this Schedule, the undertaker is to be responsible for, and make good to Neath Port Authority, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to Neath Port Authority by reason of or arising from or in connection with—

- (a) the perusal of plans and navigation schemes and the inspection of the specified work by Neath Port Authority or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within the harbour and the approaches to the harbours —

- (i) to establish the marine conditions prevailing prior to the construction of any tidal work in such area as Neath Port Authority has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 7 and
- (ii) where Neath Port Authority has reasonable cause to believe that the construction of any of the tidal work is causing or has caused any such accumulation or erosion;
- (c) the construction or failure of a specified work, or the undertaking by Neath Port Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of Neath Port Authority arising from such construction or failure;
- (d) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of any of the specified work.

(2) Without prejudice to the generality of sub-paragraph (1), the undertaker shall indemnify Neath Port Authority from and against all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of Neath Port Authority or of any person in its employ or its contractors or agents.

(4) Neath Port Authority must give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and no settlement or compromise of any such claim or demand may be made without the consent in writing of the undertaker.

27. The fact that any work or thing has been executed or done with the consent of Neath Port Authority and in accordance with any conditions or restrictions prescribed by Neath Port Authority or in accordance with any plans approved or deemed to be approved by Neath Port Authority or to its satisfaction or in accordance with any directions or award of any arbitrator or and any conditions or restrictions imposed by him, does not relieve the undertaker from any liability under the provisions of this part of this Schedule.

28. With the exception of any duty owed by Neath Port Authority to the undertaker expressly provided for in the foregoing provisions of this part of this Schedule, nothing in this Order is to be construed as imposing upon Neath Port Authority, either directly or indirectly, any form of duty or liability to which Neath Port Authority would not otherwise be subject which is enforceable by proceedings before any court.

Statutory functions

29. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, Neath Port Authority at the commencement of this Order.

Arbitration

30. Any difference or dispute arising under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Neath Port Authority, be determined by arbitration in accordance with article 53 (arbitration).

PART 3

For the protection of electricity protected persons

National Grid Electricity Transmission Plc

Application

31. For the protection of the persons referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the protected person and the persons concerned, have effect.

Interpretation

32. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the protected person to enable the protected person in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means in the case of an electricity protected person, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that protected person;

“authorised development” has the same meaning as in Schedule 1 of this Order and for the purposes of this Schedule include the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule 6 any works whatsoever which are near to or may affect apparatus of the protected person shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services and commencement shall be construed to have the same meaning;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the protected person (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 the protected person’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 the protected person including construct, 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; and

“protected person” means National Grid Electricity Transmission plc.

33. Except for paragraphs 34 (apparatus of protected persons in stopped up streets), 39 (retained apparatus: protection), 40 (expenses) and 41 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of protected persons in stopped up streets

34.—(1) Where any street is stopped up under article 10 (temporary stopping up of streets), any protected person whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the protected person will grant to the protected person legal easements reasonably satisfactory to the specified protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (temporary stopping up of streets), a protected person shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

35.—(1) The undertaker, in the case of the powers conferred by article 14 (protective work to buildings), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of any protected person or any interruption in the supply of electricity by the protected person is caused, the protected person shall bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make compensation to the protected person for any loss sustained by it; and
- (b) indemnify the protected person against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that protected person, by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the protected person with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of a protected person or its contractors or workmen; and the protected person shall give to the protected person reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the protected person and giving them an opportunity to make representations as to the claim or demand.

Acquisition of land

36. This Order shall not authorise the acquisition or extinguishment of land or rights in land or override any interest in land owned by a protected person that is or are required for the retention or maintenance of any retained apparatus except with the agreement of the protected person which shall not be unreasonably withheld.

Removal of apparatus

37.—(1) If, in the exercise of the agreement reached in accordance with paragraph 36 or in any other authorised manner, the protected person acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this part of this Schedule and any right of an protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected person in question in accordance with sub-paragraph (2) to (6) inclusive.

(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 protected person requires the removal of any apparatus placed in that land, it shall give to the protected person in question 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 a protected person reasonably needs to remove any of its apparatus) the protected person shall, subject to sub-paragraph (3), afford to the protected person to their satisfaction (taking into account 38(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of 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 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 protected person in question shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour 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 the protected person 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 the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected person in question and the undertaker.

(5) The protected person in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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) The undertaker and the protected person agree that where there is any inconsistency or duplication between the provisions set out in 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 easements rights agreements and licences granted used enjoyed or exercised by the protected person as of right or otherwise in relation to the apparatus then the provisions of this Schedule shall prevail.

Facilities and rights for alternative apparatus

38.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a protected person 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 shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected person in question and shall be no less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected person.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under (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 the protected person 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 in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection: Electricity protected persons

39.—(1) Not less than 56 days before the commencement of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise, the undertaker shall submit to the protected

person in question a plan and a ground monitoring scheme and seek from the protected person details of the underground extent of their electricity tower foundations.

(2) In relation to 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 10 metres of any apparatus, or (iii) involve works within 10 metres of the outermost edge of any tower foundations the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (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) intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues;
- (h) details of clearance to pylon foundations;
- (i) demonstration that pylon foundations will not be affected prior to, during and post construction; and
- (j) a written management plan for high voltage hazard during construction.

(3) The undertaker shall not commence any works to which sub-paragraph (2) apply until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where protected persons require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected persons' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and the protected persons shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (5) (except in an emergency).

(8) If an protected person in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 61 to 63 and 66 to 68 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(2).

(9) Nothing in this paragraph shall preclude 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, 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.

(10) The undertaker shall 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 shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

(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 the protected person 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 40.

Expenses

40.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to a protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, 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 this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected person elects to use CPO powers to acquire any necessary rights under 37(3) all costs incurred as a result of such action;
- (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, 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 Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions 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 settled by arbitration in accordance with article 52 (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 protected person in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph 70(3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall 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 shall 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 protected person in respect of works by virtue of sub-paragraph (1) shall, 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 protected person 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

41.—(1) Subject to sub-paragraphs 71(2) and 71(3), if by reason or in consequence of the construction of any such works authorised by 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 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 those works) or property of an protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and
- (b) indemnify that protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any requirement of an protected person or under its supervision shall not (subject to sub-paragraph 71(3), excuse the undertaker from liability under the provisions of this sub-paragraph 71(1)).

(3) Nothing in sub-paragraph 71(1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of an protected person, its officers, servants, contractors or agents.

(4) A protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

Protection of access routes to Baglan Bay substation

42. Without prejudice to paragraph 66 of this Schedule where the undertaker carries out any authorised development situated on over under or within land which forms part of the existing access route(s) to Baglan Bay substation the undertaker shall ensure that any cable or other equipment installed in such land as part of the authorised development shall be buried to a sufficient depth that it does not suffer damage as a consequence of the habitual use of the Baglan

Bay substation access route(s) by vehicles (including but not limited to heavy goods vehicles and large goods vehicles) accessing to and egressing from Baglan Bay substation by the protected person its contractors surveyors employees and others authorised by it for the carrying out of its undertaking.

Enactments and agreements

43. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person 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

44. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected person requires the removal of apparatus under paragraph 37(2) or a protected person makes requirements for the protection or alteration of apparatus under paragraph 39, the undertaker shall use its best 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 the protected person's undertaking and each protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

Access

45. If in consequence of the agreement reached in accordance with paragraph 36 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

46. Save for differences or disputes arising under paragraph 37(2), 37(4), 38(1) and 39 any difference or dispute arising between the undertaker and an protected person under this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 52 (arbitration).

PART 4

For the protection of electricity protected persons

Baglan Operations Limited

Application

47. For the protection of the persons referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the protected person and the persons concerned, have effect.

Interpretation

48. In this Part of this Schedule—

“apparatus” means in the case of an electricity protected person, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that protected person; in addition to water, gas and outflow apparatus

“authorised development” has the same meaning as in Schedule 1 of this Order and for the purposes of this Schedule include the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule 7 any works whatsoever which are near to or may affect apparatus of the protected person shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services and commencement shall be construed to have the same meaning;

“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” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the protected person including construct, 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;

“protected person” means Baglan Operations Limited.

49. Except for paragraphs 50 (apparatus of protected persons in stopped up streets), 53 (retained apparatus: protection: protected persons), 54 (expenses) and 55 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of protected persons in stopped up streets

50.—(1) Where any street is stopped up under article 10 (temporary stopping up of streets), any protected person whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected person legal easements reasonably satisfactory to the protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (temporary stopping up of streets), the protected person shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

51.—(1) The undertaker, in the case of the powers conferred by article 14 (protective work to buildings), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus or property of the protected person or any interruption in the supply of electricity by the protected person is caused, the undertaker shall bear and pay on demand the cost reasonably incurred by the protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make compensation to the protected person for any loss sustained by it; and
- (b) indemnify the protected person against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that protected person, by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the protected person or its contractors or workmen; and the protected person

shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving them an opportunity to make representations as to the claim or demand.

Acquisition of land

52. Regardless of any provision in this Order or anything shown in the book of reference and on the land plans, the undertaker must not acquire any apparatus or override any easement or other interest of the protected person otherwise than with the agreement of the protected person which shall not be unreasonably withheld or delayed.

Retained apparatus: protection: protected persons

53.—(1) Not less than 56 days before the commencement of any works authorised by this Order that are near to, or will or may affect any apparatus, the undertaker shall submit to the protected person in question a plan and a risk assessment in an appropriate form.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (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; and
- (f) intended maintenance regimes.

(3) The undertaker shall not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where the protected person requires any protective works to be carried out either itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected person's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) and the protected person shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (4) (except in an emergency) and such protective works must be carried out with all reasonable dispatch and with all reasonable endeavours being used to complete them within three (3) months of the expiration of the said period of 56 days.

(8) Nothing in this paragraph shall preclude 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, 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.

(9) The undertaker shall 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 shall give to the protected person notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances.
- (b) comply with sub-paragraph (10) at all times.

(10) At all times when carrying out any works authorised under the Order comply with any site safety and safe working policies and information provided by the protected person from time to time.

Expenses

54.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to the protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, 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 this Schedule including without limitation—

- (a) the approval of plans;
- (b) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (c) 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 Schedule.

Indemnity

55.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by 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 Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by the protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by the protected person in making good such damage or restoring the supply; and
- (b) indemnify the protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by the protected person or in accordance with any requirement of the protected person or under its supervision shall not (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of an protected person, its officers, servants, contractors or agents.

(4) The protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

Ground subsidence monitoring scheme in respect of the protected person's apparatus

56.—(1) No works within 15 metres of any apparatus or alternative apparatus which are capable of interfering with or risking damage to the protected person's apparatus shall commence until a scheme for monitoring ground subsidence (referred to in this paragraph as the "monitoring scheme") has been submitted to and approved by the protected person, such approval not to be unreasonably withheld or delayed.

(2) The monitoring scheme shall set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for the protected person's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraphs (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order. Any requirements of the protected person must be notified to the undertaker within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") shall be submitted to the protected person for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person save that the protected person 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 54.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Part 3 of Schedule 1 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to the protected person for its approval, such approval not to be unreasonably withheld or delayed, and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

Enactments and agreements

57. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and the protected person 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

58. Where in consequence of the proposed construction of any of the authorised development, the protected person makes requirements for modifications to the undertaker's works or the protected person makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker shall use its best 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 the protected person's undertaking and the protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

Access

59. If in consequence of the agreement reached in accordance with paragraph 52 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

60. Save for differences or disputes arising under paragraph 53 any difference or dispute arising between the undertaker and an protected person under this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 52 (arbitration).

PART 5

For the protection of electricity protected persons

Western Power Distribution (South Wales) Plc

Application

61. For the protection of the persons referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the protected person and the undertaker, have effect.

Interpretation

62. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the protected person to enable the protected person in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means in the case of an electricity protected person, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that protected person;

“authorised development” has the same meaning as in Schedule 1 of this Order and for the purposes of this Schedule include the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule 6 any works whatsoever which are near to or may affect apparatus of the protected person shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services and commencement shall be construed to have the same meaning;

“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” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the protected person including construct, 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; and

“protected person” means Western Power Distribution (South Wales) Plc.

63. Except for paragraphs 64 (apparatus of protected persons in stopped up streets), 69 (retained apparatus: protection), 70 (expenses) and 71 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of protected persons in stopped up streets

64.—(1) Where any street is stopped up under article 10 (temporary stopping up of streets), if any apparatus belonging to the protected person is in the street or accessed via that street the protected person shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected person legal easements reasonably satisfactory to the protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (temporary stopping up of streets), the protected person shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

65.—(1) The undertaker, in the case of the powers conferred by article 14 (protective work to buildings), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the protected person or any interruption in the supply of electricity by the protected person is caused, the undertaker shall bear and pay on demand the cost reasonably incurred by the protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make compensation to the protected person for any loss sustained by it; and
- (b) indemnify the protected person against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the protected person, by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the protected person or its contractors or workmen; and the protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving them an opportunity to make representations as to the claim or demand.

Acquisition of land

66. This Order shall not authorise the acquisition or extinguishment of land or rights in land owned by the protected person that is or are required for the retention or maintenance of any apparatus retained in the land of the undertaker or in any land to be acquired, held, appropriated or used under this Order except with the agreement of the protected person which shall not be unreasonably withheld.

Removal of apparatus

67.—(1) If, in the exercise of the agreement reached in accordance with paragraph 66 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this part of this Schedule and any right of the protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected person in accordance with sub-paragraph (2) to (6) inclusive.

(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 shall give to the protected person 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 the protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected person to their satisfaction (taking into account 68 below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of 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 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 protected person shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour 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 the protected person 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 the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected person and the undertaker.

(5) The protected person shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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) The undertaker and the protected person agree that where there is any inconsistency or duplication between the provisions set out in 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 easements rights agreements and licences granted used enjoyed or exercised by the protected person as of right or otherwise in relation to the apparatus then the provisions of this Schedule shall prevail.

Facilities and rights for alternative apparatus

68. Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to the protected person 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 shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected person in question and shall be no less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected person.

Retained apparatus: Protection

69.—(1) Not less than 56 days before the commencement of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 67(2) or otherwise, the undertaker shall submit to the protected person a plan.

(2) In relation to works which will or may be situated on, over, under or within (i) 8.1 metres measured in any direction of any apparatus, or (ii) involve embankment works within 10 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (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) intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) The undertaker shall not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2) —

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
- (b) shall not be unreasonably withheld.

(5) In relation to work or works to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan and method statement, submitted under sub-paragraph (1) or as relevant sub-paragraph 39(5), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 39(6) or 39(8) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to monitor and inspect the execution of those works.

(7) Where the protected person requires any protective works for the benefit or protection of any apparatus to be carried out either by themselves or by the undertaker (and whether of a temporary or permanent nature) such protective works shall be carried out to the protected person's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) and the protected persons shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or 39(5) (except in an emergency).

(8) If the protected person in accordance with sub-paragraph 39(6) or 39(8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 76 to 78 and 81 to 83 of this part of Schedule 6 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 82(2).

(9) Nothing in this paragraph shall preclude 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, 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.

(10) The undertaker shall not be required to comply with sub-paragraph 84(1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph 84(6), 84(7) and 39(8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with Western Power Distribution's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

70.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to the protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, 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 this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected person elects to use CPO powers to acquire any necessary rights under 82(3) all costs incurred as a result of such action;
- (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 any permanent protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the carrying out of any temporary protective works, together with the cost of removing them, plus any costs of maintaining any temporary works during the period that they were installed; and
- (g) 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 Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions 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 settled by arbitration in accordance with article 52 (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 protected person by virtue of sub-paragraph (1) shall

be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall 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 shall 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 shall 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 the protected person in respect of works by virtue of sub-paragraph (1) shall, 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 protected person 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

71.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by 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 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 those works) or property of the protected person, or there is any interruption in any service provided, or in the supply of any goods, by the protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by the protected person in making good such damage or restoring the supply; and
- (b) indemnify the protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by the protected person on behalf of the undertaker or in accordance with a plan approved by the protected person or in accordance with any requirement of the protected person or under its supervision shall not (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of this sub-paragraph (1)).

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of the protected person, its officers, servants, contractors or agents.

(4) The protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

(5) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land either owned by the protected person or in respect of which the protected person has an easement or wayleave for their apparatus or any other Interest or to carry out any works within 15 metres of the protected person's apparatus until the following conditions are satisfied—

- (a) unless and until the protected person is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction

of the authorised works) and the protected person has confirmed the same to the undertaker in writing; and

- (b) unless and until the protected person is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to the protected person that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and the protected person has confirmed the same in writing to the undertaker.

(6) In the event of the undertaker's failure to comply with sub-paragraph (5) of this part of Schedule 6 the protected person shall be entitled to seek injunctive relief (or any other equitable remedy) in any court of competent jurisdiction and the undertaker irrevocably and unconditionally waives any right of objection in relation to the protected person's right to seek injunctive relief or any other equitable remedy.

Enactments and agreements

72. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and the protected person 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

73. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the protected person requires the removal of apparatus under paragraph 82(2) or the protected person imposes requirements for the protection or alteration of apparatus under paragraph 69, the undertaker shall use its best 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 the protected person's undertaking and the protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

Access

74. If in consequence of the agreement reached in accordance with paragraph 66 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

75. Save for differences or disputes arising under paragraphs 82(2), 82(4) and 84 any difference or dispute arising between the undertaker and the protected person under this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 52 (arbitration).

PART 6

For the protection of gas protected persons

SSE Energy Supply Limited, SWALEC, Wales and West Utilities Limited

Application

76. For the protection of the protected persons referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person concerned, have effect.

Interpretation

77. In this Part of this Schedule—

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

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the undertaker to enable the protected person in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means in the case of a gas protected person, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“authorised development” has the same meaning as in Schedule 1 of this Order and for the purposes of this Schedule include the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule 6 any works whatsoever which are near to or may affect apparatus of the protected person shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services and commencement shall be construed to have the same meaning;

“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” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the protected person including construct, 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;

“protected person” means either of SSE Energy Supply Limited and Wales & West Utilities Limited; and

“undertaker” means the undertaker as defined in article 2 of this Order.

78. Except for paragraphs 79 (apparatus in stopped up streets), 84 (retained apparatus: protection), 85 (expenses) and 86 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Protected Person in stopped up streets

79. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (temporary stopping up of streets and rights of way), a protected person shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

80.—(1) The undertaker, in the case of the powers conferred by article 14 (protective work to buildings), shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of any protected person or any interruption in the supply of electricity, gas or water, as the case may be, by the protected person is caused, the undertaker shall bear and pay on demand the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make compensation to the protected person for any loss sustained by it; and
- (b) indemnify the protected person against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the protected person with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of a protected person or its contractors or workmen; and the protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

81. Not used.

Removal of apparatus

82.—(1) If, in the exercise of the agreement reached in accordance with paragraph (6) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this part of this Schedule and any right of a protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the undertaker in question in accordance with sub-paragraph (2) to (5) inclusive.

(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 shall give to the protected person in question 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 a protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the undertaker to their satisfaction (taking into account 83(1) below) the necessary facilities and rights for

- (a) the construction of alternative apparatus in other land of 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 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 protected person in question shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour 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 the protected person 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 the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the undertaker.

(5) The protected person in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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

83.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a protected person 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 shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected person in question and shall be no less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected person.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under (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 the protected person 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 in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection Gas Undertakers

84.—(1) Not less than 56 days before the commencement of any authorised works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 82(2) or otherwise, the undertaker shall submit to the protected person in question a plan.

(2) In relation to works which will or may be situated on, over, under or within [X] metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within [X] metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a method statement and describing—

- (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 etc;
- (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) intended maintenance regimes.

(3) The undertaker shall not commence any works to which sub-paragraph (2) applies until the protected person has given written approval of the plan so submitted.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph 69(5) or 69(7);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph 69(2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of

securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph 69(1) or as relevant sub-paragraph 69(4), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 69(5) or 69(7) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where undertakers require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected persons' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) and the protected persons shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph 69(1) or 69(4) (except in an emergency).

(8) If a protected person in accordance with sub-paragraph 69(5) or 69(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 61 to 63 and 66 to 68 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 67(2).

(9) Nothing in this paragraph shall preclude 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, 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.

(10) The undertaker shall not be required to comply with sub-paragraph 69(1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph 69(5), 69(6) and 69(7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with Wales & West Utilities policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of pipelines and associated installations operating above 2 BARs" and "General conditions to be observed for the protection of apparatus and the prevention of disruption to gas supplies" "HS(~G)47 Avoiding Danger from underground services".

Expenses

85.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to a protected person on demand all charges, costs and expenses reasonably anticipated or incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, 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 this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the undertaker elects to use CPO powers to acquire any necessary rights under 82(3) all costs incurred as a result of such action;
- (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, 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 Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions 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 settled by arbitration in accordance with article 52 (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 protected person in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall 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 shall 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 shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a protected person in respect of works by virtue of sub-paragraph (1) shall, 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 protected person 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

86.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under 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 those works) or property of a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and

- (b) indemnify that protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any requirement of a protected person or under its supervision shall not (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of this sub-paragraph (1)).

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a protected person, its officers, servants, contractors or agents.

(4) A protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

(5) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land either owned by the protected person in respect of which the protected person has an easement or wayleave for their Apparatus or any other Interest or to carry out any works within [X] metres of any protected persons Apparatus until the following conditions are satisfied:

- (a) unless and until the protected person 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 authorised works from the proposed date of commencement of construction of the authorised works) and the protected person has confirmed the same to the undertaker in writing; and
- (b) unless and until the protected person are satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and protected person has confirmed the same in writing to the undertaker.

(6) In the event of the undertakers failure to comply with sub-paragraph (5) of this Part of this Schedule the protected person shall be entitled to seek injunctive relief (or any other equitable remedy) in any court of competent jurisdiction and the undertaker irrevocably and unconditionally waives any right of objection in relation to the protected person's right to seek injunctive relief or any other equitable remedy.

Enactments and agreements

87. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person 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

88. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected person requires the removal of apparatus under paragraph 82(2) or a protected person makes requirements for the protection or alteration of apparatus under paragraph 38, the undertaker shall use its best 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 the protected person's undertaking and each protected person shall use its best endeavours to co-operate with the undertaker for that purpose.

Access

89. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

90. Save for differences or disputes arising under paragraphs 82(2), 82(4), 83(1) and 84 any difference or dispute arising between the undertaker and a protected person under this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 52 (arbitration).

PART 7

For the protection of electronic communications operators

British Telecommunications Plc, Telefonica O2 UK Limited, and Virgin Media Limited

91. For the protection of communication operators, the following provisions of this Part of this Schedule shall, unless it is otherwise agreed in writing between the undertaker and the communication operator, have effect.

92. In this Part of this Schedule—

“communication operators” means any of British Telecommunications plc, Telefonica O2 UK Limited and Virgin Media Limited; and

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003.

93. The temporary stopping up or diversion of any street under article 10 (temporary stopping up of streets) shall not affect any right of a public communications provider under paragraph 9 of the Telecommunications Code (the “Code”), contained in Schedule 2 to the Telecommunications Act 1984 as amended by Schedule 3 to the Communications Act 2003, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

94. If any of the communication operators suffer damage by reason or in consequence of the construction, use or failure of the authorised development or any subsidence resulting from those works, the undertaker shall pay any cost reasonably and properly incurred by the communication operator in making good such damage, and shall indemnify the communication operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the communication operator by reason or in consequence of any such damage, but—

- (a) nothing in this paragraph shall impose any liability on the undertaker with respect to any damage to the extent that such damage is attributable to any act or omission of the communication operator, its officers, servants, contractors or other agents; and
- (b) the communication operator shall give to the undertaker reasonable notice of any claim, demand or proceedings and shall make no settlement of any claim, demand or proceedings without the consent of the undertaker, such consent not to be unreasonably withheld.

95. Nothing in this Order shall affect any right of a public communications provider under the Code.

PART 8

For the protection of Dŵr Cymru Cyfyngedig

96. For the protection of the protected person referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person concerned have effect.

97. In this part of this Schedule

“accessories” has the same meaning as that set out in section 219 WIA 1991 but shall also include any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface and which is part of a sustainable drainage system;

“apparatus” means all apparatus or accessories vested in or belonging to the protected person for the purpose of carrying on its statutory undertaking including the outfall;

“draft specification” means a detailed plan, cross-section and description of the specified works to be prepared by the undertaker (including, without limitation, a method statement and risk assessment setting out the intention in respect of the specified works, construction methods and programmes, and the position of the apparatus that might be affected as a result of the specified works and the specified works);

“functions” in respect of the protected person has the same meaning as in section 219 WIA 1991 and 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;

“outfall” means the existing long sea outfall pipeline from Swansea Bay Waste Water Treatment Works;

“outfall works” Work No. 3 and such other works required for its provision under the powers of this Order;

“protected person” means Dŵr Cymru Cyfyngedig;

“specification” means the approved version of a draft specification considered by the protected person under paragraph 100 of this Part;

“specified works” means the outfall works and any work forming part of the authorised development in any land purchased, held, or used pursuant to the Order that is:

- (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;
- (b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is greater than 300mm in diameter;
- (c) within 9 metres either side of the centre line of a rising main; or
- (d) within 100 metres either side of the centre line of the outfall,

or which will or may in any way affect any apparatus together with all ancillary actions relating hereto.

“sustainable drainage system” means any structure designed to receive rainwater and other surface water where such structure shall include 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; and

“WIA 1991” means the Water Industry Act 1991 c.56 as amended.

Where under any provision of this Schedule the consent or agreement of any person is required, such consent shall not be unreasonably withheld or delayed, may be given subject to reasonable conditions and, in the case of each may be given by the duly authorised representative of that person.

98. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part III and Part IV of the WIA 1991.

99. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or accessories or override or extinguish any easement or other interest of the protected person or acquire any land or other interest of the protected person or create any new rights over the same without the prior written consent of the protected person.

Protection of Apparatus

100.—(1) Without prejudice to the other provisions of this Part of this Schedule, before commencing the construction, replacement, renewal or removal of any specified work, and in the case of any specified work of a temporary nature its removal, the undertaker shall submit to the protected person a draft specification.

(2) For the purpose of the preparation of the draft specification and subject to such reasonable stipulations as it may require the protected person shall as soon as reasonably practicable upon the undertaker's reasonable request permit the undertaker to have reasonable access to such plans as it may have in its possession and to any of its land or apparatus.

(3) The protected person shall examine the draft specification submitted under sub-paragraph (1) and give its written consent or proposed amendments to the draft specification within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph (3) shall be repeated where those amendments are not accepted) provided that where consent is neither given nor refused within 42 days of the submission of the draft specification (or such other time period agreed by the undertaker and the protected person acting reasonably) consent thereto shall be deemed to have been given. The undertaker shall not commence the specified works until written or deemed consent is provided by the protected person in accordance with this sub-paragraph (3).

(4) The conditions which may be imposed under any consent and relating to a specification given by the protected person hereunder include (without limitation) as to—

- (a) the commencement date and completion date of the specified works;
- (b) the reasonable removal, extension or alteration of apparatus necessitated by the specified works;
- (c) works for the protection of apparatus necessitated as a result of the specified works;
- (d) provision for access to any apparatus;
- (e) such works, provisions or methods as are reasonably necessary for the protection of the environment and/or the protection of the protected person from liability under the terms of any licence relating to its activities; and/or
- (f) an advance warning system providing for liaison between the undertaker and the protected person in respect of potential performance operational issues affecting, or damage to, apparatus arising from the specified works.

(5) The specified works shall be executed only—

- (a) in accordance with the specification;
- (b) exercising the standard of skill and care reasonably to be expected of a skilled and experienced professional person engaged in undertakings of a similar scope, nature and complexity as the specified works; and
- (c) in accordance with such reasonable conditions and requirements as may be imposed by the protected person,

and the protected person shall be entitled to watch and inspect the execution of the specified works.

(6) Nothing in this paragraph 100 shall preclude the undertaker from submitting at any time or from time to time a draft specification to be implemented in substitution of the draft specification previously submitted, and having done so the provisions of this paragraph 100 shall apply to and in respect of the new draft specification, but the substituted draft specification shall not become the specification and may not be carried out without the consent or deemed consent of the protected person.

(7) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency provided it has complied with paragraph 105 below save that the undertaker shall comply with sub-paragraph (3) above in so far as is reasonably practicable in the circumstances after carrying out any specified works to which this sub-paragraph applies.

(8) The undertaker shall be responsible to the protected person for the reasonable expenses (including VAT) incurred by the protected person in, or in connection with, the inspection of the specified works and/or the apparatus, the protection of any apparatus and/or temporary works to be undertaken by the protected person (including in respect of examining the draft specification in accordance with sub-paragraph 5(3)).

(9) Where the protected person has apparatus that will be affected by the specified works (including the outfall) the undertaker shall determine the exact location of apparatus prior to any specified works being carried out by the undertaker.

(10) The undertaker shall not make any trial holes which interfere with any apparatus without the consent of the protected person.

(11) When works for the provision of any new, extended or altered apparatus or any protective work forming part of any such new, extended or altered apparatus, or existing apparatus, have been completed under this Part of this Schedule to the reasonable satisfaction of the protected person, they shall be vested in the protected person forthwith but shall be maintainable by the undertaker until a period of:

- (a) In the case of the outfall works, 24 months has elapsed and the protected person or an engineer appointed by the protected person has issued a certificate of final inspection of the new, altered or extended apparatus.
- (b) In the case of any other specified works which vest in the protected person in accordance with this paragraph, 12 months has elapsed and the protected person or an engineer appointed by the protected person has issued a certificate of final inspection of the new, altered or extended apparatus.

Outfall

101. Save as may be authorised under paragraph 100 of this Part the undertaker shall not take any action or permit any action to be taken which is likely to endanger the structural integrity of the outfall.

Suspension of Specified Works

102.—(1) The protected person shall be entitled to instruct the undertaker to suspend the specified works (or any part of the specified works) if in the protected person's reasonable opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the specified works otherwise than in accordance with the specification or the provisions in this part of this Schedule have caused damage to any apparatus and/or are likely to cause or result in damage to any apparatus and/or damage to the environment that was not foreseen at the time of the approval of the Specification. In the event of such an instruction being given by the protected person—

- (a) the undertaker shall procure that it and its contractor(s) and subcontractor(s) shall as soon as reasonably practicable and forthwith in case of urgency suspend or cease the specified works in each case having due regard to health and safety factors and shall discuss and agree with the protected person such remedial actions (which may include works) as may be required prior to resuming the specified works and the person who shall be responsible for the performance of such remedial actions;

- (b) the undertaker and the protected person shall act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the specified works;
- (c) the protected person shall at such time as it issues any instruction under this paragraph submit to the undertaker immediately, a written notice specifying the reasons for suspending the specified works;
- (d) in the event that the protected person fails to supply the written notice within 5 working days of suspension the protected person's instruction to suspend, the specified works shall be void and the undertaker shall be entitled to recommence the specified works; and
- (e) where the protected person is responsible for any remedial action, it shall commence, carry out and complete such remedial actions pursuant to sub-paragraph (a), as soon as reasonably practicable and the protected person shall give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker shall be entitled to resume the specified works.

(2) The protected person shall be entitled to reclaim all reasonable costs of all remedial actions attributable to any act or neglect of the undertaker in accordance with this paragraph 102.

Repair, Maintenance and Emergency Works

103.—(1) If in the reasonable opinion of the protected person repairs or maintenance works are necessary to apparatus within the Order limits the undertaker shall as soon as reasonably practicable, and (without prejudice to sub-paragraph (3)), in case of emergency forthwith, but subject always to such reasonable conditions as the undertaker may impose permit access to the protected person for both personnel and equipment and allow the protected person (or its agent) to carry out such repairs or maintenance works.

(2) The undertaker is permitted to carry out emergency works provided that it first notifies the protected person of this immediately and in the event that the protected person suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the provision in paragraph 106 shall apply.

(3) The protected person shall at all times be permitted to carry out any emergency works in relation to its apparatus at the development site in accordance with Part II Schedule 6 of the WIA 1991.

Entry onto Protected Person's Land

104.—(1) Regardless of the other provisions of this Schedule the undertaker shall not access any land comprised in site 02055 as shown on the land plans (plan 2 of 18) ("the waste water treatment works") without providing 14 days' prior written notice; and

(2) The undertaker shall comply with the health and safety requirements specified by the protected person whilst present on the site of the waste water treatment works.

Expenses

105.—(1) Subject to the following provisions of this paragraph, the undertaker shall be liable to make good, or, if the protected person so decides, to repay to the protected person the reasonable expenses and costs (including without limitation legal and professional fees) reasonably incurred by the protected person in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Schedule (including any costs or compensation paid in connection with the acquisition of rights or land or the exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under the Order;

- (c) the survey of any land, apparatus or works, the inspection, superintendence and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the undertaker of any power under the Order;
- (d) the preparation and completion of any deeds of transfer where the apparatus is abandoned rather than removed; and
- (e) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any power under the Order,

within a reasonable time of being notified by the protected person that it has incurred such expenses.

(2) If in accordance with the provisions of this Schedule 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 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 52 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under 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 (2) would be payable to the protected person in question by virtue of paragraph 16(1) shall be reduced by the amount of that excess.

(3) For the purposes of paragraph 106(2) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

Damage to Apparatus

106.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works referred to in this Schedule 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 the protected person, or there is any interruption in any service provided by the protected person, the undertaker shall to the extent possible in law:

- (a) bear and pay the cost reasonably incurred by the protected person in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that protected person for any other expenses, loss, damages, penalty or costs incurred by the protected person,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose 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 the protected person, its officers, servants, contractors or agents.

(3) The protected person shall give the undertaker reasonable notice of any claim or demand from any third party arising out of or in connection with the specified works and no settlement or compromise shall be made without the consent of the undertaker.

107. Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

PART 9

For the protection of the City and County of Swansea Council

Accumulation and dredging in the River Tawe

108.—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction or presence there is caused or created an accumulation in that section of the River Tawe between the entrance to King's Dock and the Tawe Barrage the undertaker, if so requested by the City and County of Swansea Council acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction or presence and, if it refuses or fails to do so, or if the City and County of Swansea Council so elects, that council may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) For the purposes of sub-paragraph (1) above in the case of any accumulation, the remedy shall be its removal.

(3) In the event that such accumulation would have been caused in any event by the factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation only to the extent that the same is attributable to such construction or exercise.

109. Any difference arising between the undertaker and the City and County of Swansea Council other than a difference as to the meaning and construction of this part of this Schedule shall be referred to and settled by arbitration under article 52 (arbitration) of this Order

SCHEDULE 6

Article 34

Article 35

Land of which temporary possession may be taken

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
City and County of Swansea	01005	Dredging works under article 17 and paragraph 108 of Schedule 5
	01006	Dredging works under article 17 and paragraph 108 of Schedule 5
	01007	Dredging works under article 17 and paragraph 108 of Schedule 5
	01008	Dredging works under article 17 and paragraph 108 of Schedule 5
	01010	Dredging works under article 17 and paragraph 108 of Schedule 5
	01011	Dredging works under article 17 and paragraph 108 of Schedule 5
	01012	Dredging works under article 17 and paragraph 108 of Schedule 5
	01015	Dredging works under article 17 and paragraph 108 of Schedule 5
	01020	Dredging works under article 17 and paragraph 108 of Schedule 5
	01025	Dredging works under article 17 and paragraph 108 of Schedule 5
	01035	Dredging works under article 17 and paragraph 108 of Schedule 5

01040	Dredging works under article 17 and paragraph 108 of Schedule 5
01045	Dredging works under article 17 and paragraph 108 of Schedule 5
01056	Provision of a working area and construction site related to Works No. 1a, 5a, 5b, and 6a
01059	Provision of a working area and construction site related to Works No. 1a, 5a, 5b, and 6a
01061	Provision of a working area and construction site related to Works No. 1a, 5a, 5b, and 6a
01062	Dredging works under article 17 and paragraph 108 of Schedule 5
01110A	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
01111	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
01111B	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
01115	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
01120	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
01125	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
01152	Provision of a working area and construction site related to Works No. 1a and 5a
02005	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02005B	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02006	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02007	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02008	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02009	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02010	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02010B	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02011	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02012A	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02012B	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02013	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02015	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02020	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02021	Provision of a working area and construction site related

	to Works No. 7b, 7c and 7d
02025	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02026	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02031	Provision of a working area and construction site related to Works No. 5b, 5c, 5g, 5h, 7a, 7b, 9, 10
02048	Provision of a working area and construction site related to Works No. 7b, 7c and 7d
02050	Provision of a working area and construction site related to Works No. 5b, 5c, 5g, 5h, 7a, 7b, 9, 10
02070	Provision of a working area and construction site related to Works No. 5b, 5c, 5g, 5h, 7a, 7b, 9, 10
02075	Provision of a working area and construction site related to Works No. 5b, 5c, 5g, 5h, 7a, 7b, 9, 10
02115	Provision of a working area and construction site related to Works No. 5b, 5c, 5g, 5h, 7a, 7b, 9, 10
05010	Provision of a working area and construction site related to Works No. 1a, 5a, 5b, and 6a
05020	Provision of a working area and construction site related to Works No. 1a, 5a, 5b, and 6a
01060	Provision of a working area and construction site related to Work No. 1a, 5a and 5b; and dredging works under article 17 and paragraph 108 of Schedule 5
05011	Provision of a working area and construction site related to Work No. 1a, 5a and 5b; and dredging works under article 17 and paragraph 108 of Schedule 5
05015	Provision of a working area and construction site related to Works No. 1a, 5a and 6a; and dredging works under article 17 and paragraph 108 of Schedule 5
08005	Provision of a working area and construction site related to Works No. 1a, 5a and 6a; and dredging works under article 17 and paragraph 108 of Schedule 5
09005	Provision of a working area and construction site related to Works No. 1a, 5a and 6a; and dredging works under article 17 and paragraph 108 of Schedule 5
12005	Provision of a working area and construction site related to Works No. 1a, 2a, 2b, 2c, 2d; and dredging works under article 17 and paragraph 108 of Schedule 5
15005	Provision of a working area and construction site related to Works No. 1a, 2a, 2b, 2c, 2d; and dredging works under article 17 and paragraph 108 of Schedule 5
14015	Provision of a working area and construction site related to Works No. 1b and 3
16010	Provision of a working area and construction site related to Works No. 1b and 3
160056	Provision of a working area and construction site related to Works No. 1b and 3
17010	Provision of a working area and construction site related to Works No. 1b and 3
01070	Provision of Works No. 7e and 7f; and provision of a working area and construction site related to Work No. 7d
01075	Provision of Works No. 7e and 7f; and provision of a working area and construction site related to Work No.

Neath Port Talbot County Borough	02036	7d Provision of Work No. 7g
	02041	Provision of Work No. 7g
	02042	Provision of Work No. 7g; and provision of a working area related to Works No. 1b and 10
	03027	Provision of a working area and construction site for Works No. 1b and 10
	04070	Provision of a working area and construction site for Work No. 5f
	04071	Provision of a working area and construction site for Work No. 5f
	04075	Provision of a working area and construction site for Work No. 5f
	04110	Provision of a working area and construction site for Work No. 5f
	04115	Provision of a working area and construction site for Work No. 5f
	04120	Provision of a working area and construction site for Work No. 5f
	14010	Provision of a working area and construction site related to Work No. 1b
	07006	Provision of a working area and construction site related to Works No. 1b and 4; and dredging under article 17 and paragraph 23 of Schedule 5
	07010	Provision of a working area and construction site related to Works No. 1b and 4; and dredging under article 17 and paragraph 23 of Schedule 5
	07015	Provision of Work No. 4; dredging; and provision of a working area and construction site related to Works No. 1b and 4
	10020	Provision of Work No. 4; dredging; and provision of a working area and construction site related to Works No. 1b and 4
	11006	Provision of a working area and construction site related to Works No. 1b and 4; and dredging under article 17 and paragraph 23 of Schedule 5
	11010	Provision of Work No. 4; dredging under article 17 and paragraph 23 of Schedule 5; and provision of a working area and construction site related to Works No. 1b and 4
	11015	Provision of Work No. 4; dredging under article 17 and paragraph 23 of Schedule 5; and provision of a working area and construction site related to Works No. 1b and 4

SCHEDULE 7

Article 51

Documents subject to certification

The land plans listed below—

<i>(1)</i> <i>Application Document No.</i>	<i>(2)</i> <i>Drawing No.</i>	<i>(3)</i> <i>Drawing Description</i>
2.1.1b	2.1.1b	Key plan

2.1.2b	2.1.2b	Sheet 1
2.1.3c	2.1.3c	Sheet 2
2.1.4b	2.1.4b	Sheet 3
2.1.5b	2.1.5b	Sheet 4
2.1.6b	2.1.6b	Sheet 5
2.1.7b	2.1.7b	Sheet 6
2.1.8b	2.1.8b	Sheet 7
2.1.9b	2.1.9b	Sheet 8
2.1.10b	2.1.10b	Sheet 9
2.1.11b	2.1.11b	Sheet 10
2.1.12b	2.1.12b	Sheet 11
2.1.13b	2.1.13b	Sheet 12
2.1.14b	2.1.14b	Sheet 13
2.1.15b	2.1.15b	Sheet 14
2.1.16b	2.1.16b	Sheet 15
2.1.17b	2.1.17b	Sheet 16
2.1.18b	2.1.18b	Sheet 17
2.1.19b	2.1.19b	Sheet 18

the works plans listed below—

<i>(1)</i> <i>Application Document No.</i>	<i>(2)</i> <i>Drawing No.</i>	<i>(3)</i> <i>Drawing Description</i>
2.2.1		Works key plan
2.2.2B	3513/order/102.1D	Works Plan - Sheet 1
2.2.3B	3513/order/102.2D	Works Plan - Sheet 2
2.2.4B	3513/order/102.3D	Works Plan - Sheet 3
2.2.5B	3513/order/102.4D	Works Plan - Sheet 4
2.2.6B	3513/order/102.5D	Works Plan - Sheet 5
2.2.7B	3513/order/102.6D	Works Plan - Sheet 6
2.2.8B	3513/order/102.7D	Works Plan - Sheet 7
2.2.9B	3513/order/102.8D	Works Plan - Sheet 8
2.2.10B	3513/order/102.9D	Works Plan - Sheet 9
2.2.11a	5118483-ATK-02-ZZ-DR-C-1201A	Marine Works Seawalls Sections - Seet 1
2.2.12A	5118483-ATK-02-ZZ-DR-C-1202A	Marine Works Seawalls Sections - sheet 2
2.2.13A	5118483-ATK-02-ZZ-DR-C-1203A	Marine Works Seawalls Sections - sheet 3
2.2.14A	5118483-ATK-02-ZZ-DR-C-1204A	Marine Works Seawalls Sections - sheet 4
2.2.15A	5118483-ATK-02-ZZ-DR-C-1205A	Marine Works Seawalls Sections - sheet 5
2.2.16A	5118483-ATK-02-ZZ-DR-C-1206A	Marine Works Typical Sections

the access and public rights of way plans listed below—

<i>(1)</i> <i>Application Document No.</i>	<i>(2)</i> <i>Drawing No.</i>	<i>(3)</i> <i>Drawing Description</i>
2.2.17A	3513/Order/201A	Access & Public Rights of Way key plan
2.2.18	3513/Order/20.21	Access & Public Rights of Way - sheet 1

2.2.19A	3513/Order/202.2A	Access & Public Rights of Way - sheet 2
2.2.20A	3513/Order/202.3A	Access & Public Rights of Way - sheet 3
2.2.21	3513/Order/202.4	Access & Public Rights of Way - sheet 4
2.2.22	3513/Order/202.5	Access & Public Rights of Way - sheet 5
2.2.23	3513/Order/202.6	Access & Public Rights of Way - sheet 6
2.2.24	3513/Order/202.7	Access & Public Rights of Way - sheet 7
2.2.25	3513/Order/202.8	Access & Public Rights of Way - sheet 8
2.2.26	3513/Order/202.9	Access & Public Rights of Way - sheet 9
2.2.27	3513/Order/202.10	Access & Public Rights of Way - sheet 10
2.2.28	3513/Order/202.11	Access & Public Rights of Way - sheet 11

the Book of Reference;

the Environmental Statement which accompanied the application to the Secretary of State for an order granting development consent;

the Design and Access Statement;

the Demolition Plan;

drawing TLP - SWANSEA BAY - 141003 - VO.2 referred to in requirement 19 (Piling);

ERA report 2015 - 0265 as referred to in requirement 15 (Electrical Grid Connection Works);

Land Contamination: A Guide for Developers (WLGA, WAG & EAW, 2012) as referred to in requirement 12 (contamination and groundwater);

the Operational Phase Traffic Management Plan submitted with the application;

the outline Construction Environmental Management Plan dated 25 November 2014;

the outline Operational Environmental Management Plan dated 4 November 2014;

the outline Adaptive Environmental Management Plan dated 25 November 2014; and

the drawings listed below, which comprise the planning drawings, and includes works sections:

<i>(1)</i> <i>Application</i> <i>Document No.</i>	<i>(2)</i> <i>Drawing No.</i>	<i>(4)</i> <i>Drawing Description</i>
2.4.1A	3513_PL_001A	Masterplan Key Plan
2.4.2	3513_PL_002.1	Masterplan Detail Scale - Sheet 1 of 6
2.4.3	3513_PL_002.2	Masterplan Detail Scale - Sheet 2 of 6
2.4.4	3513_PL_002.3	Masterplan Detail Scale - Sheet 3 of 6
2.4.5	3513_PL_002.4	Masterplan Detail Scale - Sheet 4 of 6
2.4.6	3513_PL_002.5	Masterplan Detail Scale - Sheet 5 of 6
2.4.7	3513_PL_002.6	Masterplan Detail Scale - Sheet 6 of 6
2.4.8	3513_PL_101	Western Landfall Plan
2.4.9	3513_PL_102	Western Landfall Vegetation

2.4.10	3513_PL_103	Western Landfall Sections
2.4.11	3513_PL_104	Western Landfall Sections
2.4.12	3513_PL_105	Eastern Landfall Plan
2.4.13	3513_PL_106	Eastern Landfall Sections
2.4.14	3513_PL_107	Offshore Building Public Realm Plan
2.4.15A	3513_PL_108A	Offshore Building Public Realm Sections
2.4.16	3513_PL_109	Saltmarsh Plan
2.4.17	3513_PL_110	Saltmarsh Sections
2.4.18	3513_PL_111	Typical Queen's Dock Access Road Plan and Section
2.4.19	3513_PL_112	Typical Lagoon Wall Treatment Plan and Section
2.4.20	3513_PL_113	Spectator Terrace Plan and Section
2.4.21	3513_PL_114	Halfway Point Plan and Section
2.4.22	3513_PL_115	Typical Fence and Gate Details
2.4.23	5118483-ATK-02-ZZ-DR-C-1207	Marine Works Lagoon Water Shuttle
2.4.24	5118483-ATK-02-ZZ-DR-C-1110	Marine Works Turbine Housing and Sluices General Arrangement
2.4.25A	TLSB-ATK-02-XX-DR-C-2000A	Marine Works 7m Turbine House Typical Section
2.4.26A	5118483-ATK-02-ZZ-DR-C-1209A	Marine Works Sluice House Typical Section
2.4.27A	5118483-ATK-02-ZZ-DR-C-1213A	Marine Works Turbine and Sluice Gate Housing Elevation
2.4.28	5118483-ATK-00-ZZ-DR-C-1301	HV Cable Route and Utilities - Sheet 1 of 8
2.4.29	5118483-ATK-00-ZZ-DR-C-1302	HV Cable Route and Utilities - Sheet 2 of 8
2.4.30	5118483-ATK-00-ZZ-DR-C-1303	HV Cable Route and Utilities - Sheet 3 of 8
2.4.31	5118483-ATK-00-ZZ-DR-C-1304	HV Cable Route and Utilities - Sheet 4 of 8
2.4.32	5118483-ATK-00-ZZ-DR-C-1305	HV Cable Route and Utilities - Sheet 5 of 8
2.4.33	5118483-ATK-00-ZZ-DR-C-1306	HV Cable Route and Utilities - Sheet 6 of 8
2.4.34	5118483-ATK-00-ZZ-DR-C-1307	HV Cable Route and Utilities - Sheet 7 of 8
2.4.35	5118483-ATK-00-ZZ-DR-C-1308	HV Cable Route and Utilities - Sheet 8 of 8
2.4.36	5118483-ATK-02-ZZ-DR-C-1210	HV Cable Route Typical Details
2.4.37	5118483-ATK-HW00-ZZ-DR-D-1401	Improvement Works to Existing Highway Fabian Way Junction 3 - General Arrangement
2.4.38	5118483-ATK-HW00-ZZ-DR-D-1402	TLP Access Road and Construction Access Road - General Arrangement
2.4.39	5118483-ATK-HW00-ZZ-DR-D-1406	ABP Junction Arrangement - General Arrangement
2.4.40A	5118483-ATK-00-ZZ-DR-C-1111A	Marine Works Dredging General Arrangement
2.4.41	3513/Order/401	Demolition (s) Key Plan
2.4.42	3513/Order/402.1	Demolition (s) Plan - Sheet 1 of 3

2.4.43	3513/Order/402.2	Demolition (s) Plan - Sheet 2 of 3
2.4.44	3513/Order/402.3	Demolition (s) Plan - Sheet 3 of 3
	<i>Western Landfall Building</i>	
2.4.45	PL(O) 50 \ 51 \ 52 \ 53	GA Elevations
2.4.46	PL(O) 60	GA Sections A0 Landscape
2.4.47	PL(O) 100 \ 200 \ 300	GA Plans A0 Landscape
	<i>Offshore Building</i>	
2.4.48	1254_C1002_A	Proposed Plan: Basement -2
2.4.49	1254_C1003_A	Proposed Plan: Basement -1
2.4.50	1254_C1004_A	Proposed Plan: Ground Floor
2.4.51	1254_C1005_A	Proposed Plan: First Floor
2.4.52	1254_C1006_A	Proposed Plan: Second Floor
2.4.53	1254_C1007_A	Proposed Plan: Roof
2.4.54	1254_C1010_A	Proposed Section: A-A
2.4.55	1254_C1011_A	Proposed Section: B-B
2.4.56	1254_C1012_A	Proposed Section: C-C
2.4.57	1254_C1024_A	Proposed Elevations
	<i>SSSI Building</i>	
2.4.58	1259_C1002_A	Proposed Drawings: Burrows Information Centre

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Tidal Lagoon (Swansea Bay) plc to construct, operate and maintain, a tidal lagoon generating station in Swansea Bay together with all necessary development. For the purposes of the development it authorises Tidal Lagoon (Swansea Bay) plc is authorised by the Order compulsorily or by agreement to purchase land and rights in land and to use land, as well as to override easements and other rights. The Order also authorises the making of alterations to the highway network, provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the book of reference plans and other documents referred to in the Order, certified in accordance with article 50 of the Order (certification and construction of plans and documents) may be inspected free of charge at the offices of the City and County of Swansea Council, Civic Centre, Oystermouth Road, Swansea SA1 3SN.