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STATUTORY INSTRUMENTS

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**2014 No. 2441**

**INFRASTRUCTURE PLANNING**

**The Clocaenog Forest Wind Farm Order 2014**

*Made* - - - - *11th September 2014*

*Coming into force* - - *2nd October 2014*

An application has been made to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(1) for an Order under sections 37, 114, 115 and 120 of the Planning Act 2008(2).

The application was examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(3).

The single appointed person, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) and (2) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, and 120 of the 2008 Act, makes the following Order:

**PART 1**

**Preliminary**

**Citation and commencement**

**1.** This Order may be cited as the Clocaenog Forest Wind Farm Order 2014 and come into force on 2nd October 2014.

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(1) [S.I. 2009/2264](#). Amended by [S.I. 2010/602](#), [2012/635](#), [2012/2732](#).

(2) [2008 c.29](#). The relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act [2011 \(c.20\)](#), and by sections 22 to 27 of the Growth and Infrastructure Act [2013 \(c.27\)](#). There are other amendments to the 2008 Act which are not relevant to this Order.

(3) [S.I. 2010/103](#). Amended by [SI 2012/635](#).

## Interpretation

### 2. (1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(4);
- “the 1965 Act” means the Compulsory Purchase Act 1965(5);
- “the 1980 Act” means the Highways Act 1980(6);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(7);
- “the 1990 Act” means the Town and Country Planning Act 1990(8);
- “the 1991 Act” means the New Roads and Street Works Act 1991(9);
- “the 2008 Act” means the Planning Act 2008;
- “access plan” means plan reference CF/PLAN04/ACCESS/01-07 certified as the access and public rights of way plan by the Secretary of State for the purposes of this Order;
- “the ancillary works” means the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by the Order which are not development within the meaning of section 32 of the 2008 Act;
- “the authorised development” means the development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order;
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;

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- (4) 1961 c.33. Sections 1 and 4 were amended by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Sections 2 and 3 were repealed by that Order. There are other amendments to the 1961 Act which are not relevant to this Order.
  - (5) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and 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.
  - (6) 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 1985 (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.
  - (7) 1984 c.27. Section 1 was amended by the New Roads and Street Works Act 1991 (c.22), the Environment Act 1995 (c.25), the Transport Act 2000 (c.38), the Local Transport Act 2008 (c.26). Section 9 was amended by the New Roads and Street Works Act 1991 (c.22), the Road Traffic Act 1991 (c.40) and the Local Government Act 1985 (c.51). Section 14 was amended by the Road Traffic (Temporary Restrictions) Act 1991 (c.26). Section 15 was amended by the Road Traffic (Temporary Restrictions) Act 1991 (c.26) and S.I. 2006/1177. There are other amendments to the 1984 Act which are not relevant to this Order.
  - (8) 1990 c.8. Section 20(60) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
  - (9) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

“the authorised project” means the authorised development and the ancillary works authorised by this Order;

“the book of reference” means the book of reference v2 submitted in November 2013 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;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order;

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

“the land plan” means the plan reference CF/PLAN01/LAND/01-07 certified as the land plan by the Secretary of State for the purposes of this Order;

“the limits of deviation” means the limits of deviation referred to in article 6 (power to deviate);

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, but not so as to vary from the description of the authorised project in Schedule 1 and only to the extent assessed in the environmental statement, and “maintenance” is to be construed accordingly;

“Order land” means the land shown on the land plan as—

- (a) land required for or affected by the authorised development,
- (b) land subject to the interference with private rights, and
- (c) land subject to the creation of new rights;

“Order limits” means the order limits shown on the works plan within which the authorised project may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981<sup>(10)</sup>;

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003;

“public sewer or drain” means a sewer or drain which belongs to the Natural Resources Wales, a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(11)</sup> (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;

“public utility undertaker” has the same meaning as in the 1980 Act.

“relevant planning authority” means the County Borough of Conwy in relation to land situated in the County Borough of Conwy, and the County of Denbighshire in relation to land situated in the County of Denbighshire;

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“Requirement” means a requirement set out in Part 3 of Schedule 1 (Requirements);

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003<sup>(12)</sup>.

“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;

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(10) 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.

(11) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

(12) 2003 c.21. There are amendments to this Act which are not relevant to this Order.

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

“undertaker” means RWE Innogy UK Limited (company number 2550622) whose registered office is at Auckland House, Lydiard Fields, Great Western Way, Swindon, Wiltshire SN5 8ZT;

“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 plan” means the plan reference CF/PLAN02/WORKS/01-07 certified as the works plan 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 areas distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project are taken to be measured along that work.

(4) References in this Order to a numbered work are references to a work number in Part 1 of Schedule 1 (authorised development), and shown on the works plan.

## PART 2

### Principal powers

#### **Development consent etc granted by the Order**

**3.** (1) Subject to the provisions of this Order, and to the Requirements in Part 3 of Schedule 1, the undertaker is granted—

- (a) development consent for the authorised development in Part 1 of Schedule 1, and
- (b) consent for the ancillary works in Part 2 of Schedule 1,

to be carried out within the Order limits.

(2) Subject to article 6 (power to deviate), the authorised development may only be constructed in the lines or situations shown on the works plan.

(3) Notwithstanding anything in this Order or shown on the works plan but without prejudice to the provisions of article 6 (power to deviate) the undertaker may construct—

- (a) Works No. 2A, 5A and 14A or Works No. 2B, 5B and 14B but may not construct both Works No. 2A, 5A and 14A and Works No. 2B, 5B and 14B under the powers conferred by this Order, and
- (b) Work No. 4A or 4B but may not construct more than one of those works under the powers conferred by this Order.

(4) Where the undertaker constructs—

- (a) either Work No. 4A or Work No. 4B as part of the authorised development, the undertaker must notify the relevant planning authority prior to the commencement of the authorised development which of those Works it intends to construct, and
- (b) either Works No. 5A and 14A or Works No. 5B and 14B as part of the authorised development, the undertaker must notify the relevant planning authority prior to the commencement of the authorised development which of those Works it intends to construct.

### **Procedure in relation to approvals etc under Requirements**

4. (1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a Requirement, the following provisions apply, as if the Requirement was a condition to which planning permission was subject—

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

(2) 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(13).

### **Maintenance of authorised project**

5. Subject to other provisions of this Order or an agreement made under this Order, the undertaker may at any time and from time to time maintain the authorised project.

### **Power to deviate**

6. (1) Subject to paragraph (2), in constructing or maintaining the authorised development comprising works numbered 1 to 14B in Schedule 1 (authorised works), the undertaker may deviate laterally from the lines or situations shown on the works plan only to the extent of the limits of deviation shown on that plan.

(2) In constructing and maintaining Work No. 2A or 2B the undertaker may—

- (a) deviate from the commencement and termination points specified for each of the cable routes referred to in the first column of the Tables comprised within the description of those Works, and
- (b) within the limits of deviation, construct and maintain those cable routes between the commencement and termination points so shown in the Tables.

### **Operation of generating station**

7. (1) The undertaker is authorised to operate and use the authorised development for generating electricity.

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

### **Benefit of Order**

8. (1) Subject to the provisions of this article, 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

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(13) Electricity Act 1989 (c.29) Section 6 has been amended by the Utilities Act 2000 (c.27), Energy Act 2004 (c.20), Climate Change Act 2008 (c.27), Energy Act 2011 (c.16), S.I. 2011/2704 and S.I. 2012/2400.

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

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

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

### **Defence to proceedings in respect of statutory nuisance**

**9.** (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(14)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the condition set out in paragraph (2) has been satisfied.

(2) The condition to be satisfied for the purposes of paragraph (1) is that the defendant shows that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the construction of the authorised project and that the nuisance is attributable to the carrying out of the authorised project 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) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(15)</sup>.

(3) 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), does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

(4) The application to the authorised project of section 158 of the 2008 Act (nuisance: statutory authority) or any rule of law having similar effect does not extend to confer upon the undertaker the protection afforded by section 158 of the 2008 Act in respect of any nuisance arising from noise attributable to the use of the authorised project.

### **Street works**

**10.** 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 and may—

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

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<sup>(14)</sup> 1990 c.43. There are amendments to this Act which are not relevant to this Order.

<sup>(15)</sup> 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.

### **Stopping up of streets**

**11.** (1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 3 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the access plan, in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) may be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

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

(4) This article is subject to article 30 (apparatus etc of statutory undertakers in stopped-up streets).

(5) This article does not relieve the undertaker from any obligation to obtain an order under sections 247 or 257 of the 1990 Act.

### **Public rights of way**

**12.** (1) With effect from the stopping up of the footpath described in columns (1) and (2) of Schedule 3 (streets to be stopped up) all public rights of way over the relevant section of footpath are extinguished and public rights of way over the section of footpath described in column (4) of Schedule 3 (streets to be stopped up) to this Order are created.

(2) This article does not relieve the undertaker from any obligation to obtain an order under sections 247 or 257 of the 1990 Act.

### **Application of the 1991 Act**

**13.** (1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under the powers conferred by article 14 (temporary stopping up of streets) and the carrying out of streets works under article 10 (street works) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- (a) section 54 (advance notice of certain works),
- (b) section 55 (notice of starting date of works),
- (c) section 57 (notice of emergency works),
- (d) section 59 (general duty of street authority to co-ordinate works),
- (e) section 60 (general duty of undertakers to co-operate),
- (f) section 68 (facilities to be afforded to street authority),
- (g) section 69 (works likely to affect other apparatus in the street),
- (h) section 76 (liability for cost of temporary traffic regulation),
- (i) section 77 (liability for cost of use of alternative route),
- (j) section 82 (liability for damage or loss caused), and

all other such provisions as apply for the purposes of the provisions mentioned above.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) have effect, as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

### **Temporary stopping up of streets**

**14.** (1) The undertaker, during and for the purposes of carrying out the authorised project, 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 going to or from premises abutting 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 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the access plan, in column (3) of that Schedule.

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

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent may not be unreasonably withheld.

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

(6) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b) that street authority will be deemed to have granted consent.

(7) This article does not relieve the undertaker from any obligation to obtain an order under the 1984 Act.

### **Access to works**

**15.** (1) The undertaker may, for the purposes of the construction or maintenance of the authorised project—



- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works) at or about the points marked “X” on the works plan,
  - (b) with the approval of the relevant planning authority, such approval not to be unreasonably withheld, 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 project, and
  - (c) with the approval of the relevant planning authority, such approval not to be unreasonably withheld, after consultation with the highway authority, strengthen, improve, repair or reconstruct any street under the powers conferred by this Order.
- (2) If a relevant planning authority which receives an application for approval under paragraph (1) (b) or (c) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it will be deemed to have granted approval.

### **Construction and maintenance of new or altered streets**

**16.** (1) Any street to be constructed under this Order is to be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street, when completed to the reasonable satisfaction of the street authority, and unless otherwise agreed, is to be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), the court is to have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonably person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(5) Nothing in this article shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker may not by reason of any duty under that article to maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

### **Agreements with street authorities**

- 17.** (1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street authorised by this Order;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) any stopping up, alteration or diversion of a street authorised by this Order; or
  - (d) the carrying out in the street of any of the works referred to in article 10(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.

### **Discharge of water**

**18.** (1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project 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) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(16) (right to communicate with public sewers).

(3) The undertaker may 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 may not be unreasonably withheld.

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

(5) The undertaker may not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker shall 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.

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(16) 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.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010<sup>(17)</sup>.

(8) If a person who receives an application or consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application or consent under paragraph (3) or approval under paragraph (4)(a) that person will be deemed to have granted consent or given approval, as the case may be.

(9) This article does not relieve the undertaker of any requirement to obtain from the Natural Resources Wales any permit or licence under any other legislation that may be required to authorise the making of a connection to or, the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (2).

(10) In this article expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

#### **Authority to survey and investigate the land**

**19.** (1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits 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, in order to enter onto land under this article, if so required when 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 shall 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 may not be unreasonably withheld.

(5) The undertaker will 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, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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<sup>(17)</sup> S.I. 2010/675.

(6) If either a highway authority or a street authority fails to notify the undertaker of a decision within 28 days of receiving an application or consent under paragraph (4)(a) or (4)(b), as the case may be, that authority will be deemed to have granted consent.

## PART 3

### Powers of acquisition

#### Compulsory acquisition of land and rights

**20.** Subject to article 23 (compulsory acquisition of rights) and article 33 (Crown rights) the undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental, to it.

#### Time limit for exercise of authority to acquire land compulsorily

- 21.** After the end of the period of 5 years beginning on the day on which this Order is made—
- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
  - (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981~~(18)~~).

#### Application and modification of legislative provisions

**22.** (1) Subject to the modifications set out in paragraph (2), for the purposes of Schedule 2 to the 1981 Act, Parts 1, 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981~~(19)~~ (minerals) apply to the Order land as if this Order were a compulsory purchase order made under Part 1 of that Act.

- (2) The modifications are—
- (a) paragraph 8(3) is not incorporated;
  - (b) for “the acquiring authority” substitute “the undertaker”; and
  - (c) in paragraph 1(1) after “compulsory purchase order” insert “or a development consent order”.

(3) In this article “mines” has the same meaning as in paragraph 1 of Part 1 of Schedule 2 to the Acquisition of Land Act 1981.

#### Compulsory acquisition of rights

**23.** (1) The undertaker may acquire compulsorily new rights over the Order land specified in column (1) of Part 1 of Schedule 6 (Land subject to acquisition of new rights and interference with private rights), by creating them. The undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of Part 1 of that Schedule.

(2) The undertaker may interfere with such private rights as are specified in column (2) of Part 2 of that Schedule in relation to the land specified in column (1) of Part 2 of that Schedule.

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**(18)** 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.

**(19)** 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights)) where the undertaker acquires a right over the Order land under paragraph (1) the undertaker may not be required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over the Order land by the creation of a new right.

### **Private rights**

**24.** (1) From the date of entry by the undertaker onto any part of the Order land for the purposes of exercising any power under the Order, the private rights over the Order land referred to in paragraph (7) are subject to the provisions of this article.

(2) All private rights over land of which the undertaker takes temporary possession for construction purposes are suspended and unenforceable for so long as the undertaker remains in occupation of that land.

(3) Any person who suffers loss by the suspension of any private right under this article shall be entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

(5) Paragraph (2) has effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the Order land or the acquisition of rights over or affecting the Order land,

(ii) the undertaker's taking temporary possession of it,

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

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

(6) If any such agreement as is referred to in paragraph (5)(b)—

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

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

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

(7) Reference in this article to private rights over land means the private rights specified in column (2) of Part 2 of Schedule 6 to this Order in relation to the lands numbered 2, 3, 4, 5, 6, 7 and 8 on the land plan and includes references to any trusts or incidents to which the land is subject.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**25.** (1) The Compulsory Purchase (Vesting Declarations) Act 1981(20) applies as if this Order were a compulsory purchase order.

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(20) 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

(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) there is substituted—

“(1) Before making a declaration under section 4 with respect to 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
- (b) published in a local newspaper circulating in the area in which the land is situated.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and “and published” is inserted after “given”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(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” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act.

## PART 4

### Miscellaneous and general

#### **Application of landlord and tenant law**

26. (1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project 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 project, 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) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

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Urban Development Act 1993 (c. 28); and sections 56 and 3210) 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.

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

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

### **Operational land for purposes of the 1990 Act**

27. 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**

28. (1) The undertaker may fell or lop any tree or shrub within or encroaching upon the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker may do no unnecessary damage to any tree or shrub and shall 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.

(4) The exercise of any power under paragraph (1) may be exercised only with the consent of the owner of the land concerned.

### **Statutory undertakers**

29. (1) The undertaker may for the purposes of article 10 (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 within the plots of land described in column (1) of Part 1 of Schedule 6 to this Order.

### **Apparatus and rights of statutory undertakers in stopped-up streets**

30. (1) Where a street is stopped up under article 11 (stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 11 (stopping up of streets), any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it, or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street, and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus, or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus may not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) 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 utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) may not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.



### **Recovery of costs of new connections**

**31.** (1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) may not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers), any person who is—

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

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

(3) This article may not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

### **Removal of human remains**

**32.** (1) In this article “the specified land” means the land within the limits of deviation.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it shall remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project, and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to Denbighshire County Council and Conwy County Borough Council.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

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

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place, or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner

by the county court, and the court may make an order specifying who will remove the remains and as to the payment of the costs of the application.

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

(9) Subject to paragraph (10), the undertaker must remove any remains in the specified land and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose if—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of the remains,
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days,
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains, or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

and, so far as possible, remains from individual graves must be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to Denbighshire County Council and Conwy County Borough Council.

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

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

(14) Section 25 of the Burial Act 1857<sup>(21)</sup> (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) may not apply to a removal carried out in accordance with this article.

### **Crown rights**

**33.** (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—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

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(21) 1857 c.81. There are amendments to this Act which are not relevant to this Order.

- (i) belonging to Her Majesty in right of her Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of her 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 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 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.
- (2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions.

### Service of notices

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

- (a) by post,
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied, or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

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

(3) For the purposes of section 7 of the Interpretation Act 1978(22) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

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

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

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission,
- (b) the notice or document is capable of being accessed by the recipient,

- (c) the notice or document is legible in all material respects, and
- (d) in a form sufficiently permanent to be used for subsequent reference.

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

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

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

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

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

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

### **Protection of interests**

**35.** Schedule 8 (protection of electricity, gas, water and sewerage undertakers to this Order) has effect.

### **Certification of plans etc**

**36.** (1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the land plan;
- (c) access plan;
- (d) the works plan; and
- (e) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

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

### **Arbitration**

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

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

11th September 2014

*Giles Scott*  
Head of Unit  
Department of Energy and Climate Change

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## SCHEDULE 1

Article 3

Authorised project

## PART 1

Authorised development

**In the County of Denbighshire and in the County Borough of Conwy—**

A wind energy electricity generating station with an installed capacity of between 64 and 96MW comprising a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act consisting of—

Work No. 1 – Up to 32 wind turbines each sited on concrete foundations incorporating hardstanding for cranes, each turbine being fitted with rotating blades and having a height to blade tip of up to 145 metres and including external transformers located at the base of the turbine. The wind turbines comprising Work No. 1 will be situated at the following locations—

| <i>Wind turbine number</i> | <i>Grid reference</i> |                 |
|----------------------------|-----------------------|-----------------|
|                            | <i>Easting</i>        | <i>Northing</i> |
| WT 1                       | 301118                | 358328          |
| WT 2                       | 301550                | 358106          |
| WT 3                       | 301063                | 357801          |
| WT 4                       | 300021                | 357651          |
| WT 5                       | 300510                | 357483          |
| WT 6                       | 301065                | 357256          |
| WT 7                       | 300449                | 357030          |
| WT 8                       | 301282                | 356957          |
| WT 9                       | 300057                | 356694          |
| WT 10                      | 301308                | 356533          |
| WT 11                      | 301151                | 356100          |
| WT 12                      | 300741                | 355620          |
| WT 13                      | 301320                | 355593          |
| WT 14                      | 300957                | 355275          |
| WT 15                      | 301512                | 355170          |
| WT 16                      | 301081                | 354833          |
| WT 17                      | 301599                | 354551          |
| WT 18                      | 301885                | 354174          |
| WT 19                      | 302153                | 353716          |
| WT 20                      | 301561                | 353647          |

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| <i>Wind turbine number</i> | <i>Grid reference</i> |                 |
|----------------------------|-----------------------|-----------------|
|                            | <i>Easting</i>        | <i>Northing</i> |
| WT 21                      | 300770                | 353343          |
| WT 22                      | 301297                | 353291          |
| WT 23                      | 302358                | 353159          |
| WT 24                      | 300610                | 352531          |
| WT 25                      | 301716                | 352540          |
| WT 26                      | 301193                | 352528          |
| WT 27                      | 302724                | 352076          |
| WT 28                      | 300752                | 352025          |
| WT 29                      | 301198                | 351850          |
| WT 30                      | 301382                | 351501          |
| WT 31                      | 300880                | 350721          |
| WT 32                      | 301232                | 350505          |

In Work No. 1, references to the locations of a wind turbine are references to the centre point of that turbine.

Work No. 2A – A series of electrical cables with a nominal voltage of 33 kilovolts together with a cable for the transmission of electronic communications buried beneath the surface of the ground along the general line of the tracks and roads comprised in Work No. 3 and connecting the wind turbines comprising Work No. 1 and the onsite electricity substation comprising Work No. 5A arranged in the following circuit routes—

| <i>Cable circuit route number</i> | <i>Commencement point</i>      | <i>Termination point</i> |
|-----------------------------------|--------------------------------|--------------------------|
| 1                                 | Substation forming Work No. 5A | WT1                      |
|                                   | WT1                            | WT2                      |
|                                   | WT2                            | WT3                      |
|                                   | WT3                            | WT4                      |
|                                   | WT4                            | WT5                      |
|                                   | WT5                            | WT7                      |
|                                   | WT7                            | WT9                      |
| 2                                 | Substation forming Work No. 5A | WT6                      |
|                                   | WT6                            | WT8                      |
|                                   | WT8                            | WT10                     |
|                                   | WT10                           | WT11                     |
|                                   | WT11                           | WT12                     |
|                                   | WT12                           | WT13                     |
|                                   | WT13                           | WT14                     |

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| <i>Cable circuit route number</i> | <i>Commencement point</i>      | <i>Termination point</i> |
|-----------------------------------|--------------------------------|--------------------------|
| 3                                 | Substation forming Work No. 5A | WT15                     |
|                                   | WT15                           | WT16                     |
|                                   | WT16                           | WT17                     |
|                                   | WT17                           | WT18                     |
|                                   | WT18                           | WT20                     |
|                                   | WT20                           | WT21                     |
| 4                                 | Substation forming Work No. 5A | WT19                     |
|                                   | WT19                           | WT22                     |
|                                   | WT22                           | WT23                     |
|                                   | WT23                           | WT24                     |
|                                   | WT24                           | WT26                     |
|                                   | WT26                           | WT28                     |
| 5                                 | Substation forming Work No. 5A | WT25                     |
|                                   | WT25                           | WT27                     |
|                                   | WT27                           | WT29                     |
|                                   | WT29                           | WT30                     |
|                                   | WT30                           | WT31                     |
|                                   | WT31                           | WT32                     |

Work No. 2B – A series of electrical cables with a nominal voltage of 33 kilovolts together with a cable for the transmission of electronic communications buried beneath the surface of the ground along the general line of the tracks and roads comprised in Work No. 3 and connecting the wind turbines comprising Work No. 1 and the onsite electricity substation comprising Work No. 5B arranged in the following circuit routes—

| <i>Cable circuit route number</i> | <i>Commencement point</i>      | <i>Termination point</i> |
|-----------------------------------|--------------------------------|--------------------------|
| 1                                 | Substation forming Work No. 5B | WT24                     |
|                                   | WT24                           | WT26                     |
|                                   | WT26                           | WT28                     |
|                                   | WT28                           | WT30                     |
|                                   | WT30                           | WT31                     |
|                                   | WT31                           | WT32                     |
| 2                                 | Substation forming Work No. 5B | WT19                     |
|                                   | WT19                           | WT22                     |
|                                   | WT22                           | WT23                     |
|                                   | WT23                           | WT25                     |



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| <i>Cable circuit route number</i> | <i>Commencement point</i>      | <i>Termination point</i> |
|-----------------------------------|--------------------------------|--------------------------|
|                                   | WT25                           | WT27                     |
|                                   | WT27                           | WT29                     |
| 3                                 | Substation forming Work No. 5B | WT15                     |
|                                   | WT15                           | WT16                     |
|                                   | WT16                           | WT17                     |
|                                   | WT17                           | WT18                     |
|                                   | WT18                           | WT20                     |
|                                   | WT20                           | WT21                     |
| 4                                 | Substation forming Work No. 5B | WT6                      |
|                                   | WT6                            | WT8                      |
|                                   | WT8                            | WT10                     |
|                                   | WT10                           | WT11                     |
|                                   | WT11                           | WT12                     |
|                                   | WT12                           | WT13                     |
|                                   | WT13                           | WT14                     |
| 5                                 | Substation forming Work No. 5B | WT1                      |
|                                   | WT1                            | WT2                      |
|                                   | WT2                            | WT3                      |
|                                   | WT3                            | WT4                      |
|                                   | WT4                            | WT5                      |
|                                   | WT5                            | WT7                      |
|                                   | WT7                            | WT9                      |

Work No. 3 – A series of new tracks, existing tracks subject to improvement and widening and public roads subject to widening as described in the following tables—

#### **New tracks**

| <i>Access track no</i> | <i>Commencement point</i> |                 | <i>Termination point</i> |                 |
|------------------------|---------------------------|-----------------|--------------------------|-----------------|
|                        | <i>Easting</i>            | <i>Northing</i> | <i>Easting</i>           | <i>Northing</i> |
| N1                     | 301053                    | 354912          | 301148                   | 354923          |
| N2                     | 301732                    | 353137          | 301759                   | 353249          |
| N7                     | 300779                    | 357705          | 301053                   | 357760          |
| N9                     | 300551                    | 354816          | 300680                   | 354787          |
| N12                    | 301051                    | 357035          | 301004                   | 356965          |
| N13                    | 300997                    | 356851          | 301005                   | 356965          |

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| <i>Access track no</i> | <i>Commencement point</i> |                 | <i>Termination point</i> |                 |
|------------------------|---------------------------|-----------------|--------------------------|-----------------|
|                        | <i>Easting</i>            | <i>Northing</i> | <i>Easting</i>           | <i>Northing</i> |
| N14                    | 301018                    | 355995          | 301095                   | 355964          |
| N15                    | 300780                    | 355350          | 300896                   | 355416          |
| N18                    | 301763                    | 352551          | 301682                   | 352621          |
| N19                    | 301187                    | 352084          | 301232                   | 351977          |
| N20                    | 300744                    | 358780          | 300798                   | 358668          |
| N21                    | 299761                    | 357707          | 299720                   | 357850          |
| N22                    | 300062                    | 357628          | 299986                   | 357686          |
| N23                    | 301289                    | 352268          | 301345                   | 352245          |
| N24                    | 301203                    | 352481          | 301211                   | 352434          |
| N4                     | 301260                    | 351872          | 301521                   | 351501          |

#### **New spur tracks**

| <i>Access track no</i> | <i>Commencement point</i> |                 | <i>Termination point</i> |                 |
|------------------------|---------------------------|-----------------|--------------------------|-----------------|
|                        | <i>Easting</i>            | <i>Northing</i> | <i>Easting</i>           | <i>Northing</i> |
| S1                     | 301062                    | 358319          | 301118                   | 358328          |
| S2                     | 301515                    | 358109          | 301549                   | 358107          |
| S3                     | 301063                    | 357801          | 301069                   | 357772          |
| S4                     | 300030                    | 357651          | 300021                   | 357651          |
| S5                     | 300740                    | 357556          | 300509                   | 357483          |
| S6                     | 301122                    | 357097          | 301065                   | 357256          |
| S7                     | 300529                    | 356984          | 300449                   | 357030          |
| S8                     | 301122                    | 357097          | 301282                   | 356957          |
| S9                     | 300069                    | 356708          | 300057                   | 356694          |
| S10                    | 301343                    | 356415          | 301308                   | 356533          |
| S11                    | 301151                    | 356100          | 301108                   | 355973          |
| S12                    | 300741                    | 355620          | 300999                   | 355802          |
| S13                    | 301084                    | 355554          | 301320                   | 355593          |
| S14                    | 300834                    | 355306          | 300957                   | 355275          |
| S15                    | 301438                    | 355078          | 301511                   | 355170          |
| S16                    | 301081                    | 354834          | 301063                   | 354899          |
| S17                    | 301554                    | 354556          | 301599                   | 354551          |
| S18                    | 301885                    | 354174          | 301845                   | 354063          |
| S19                    | 301875                    | 353692          | 302153                   | 353716          |

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| <i>Access track no</i> | <i>Commencement point</i> |                 | <i>Termination point</i> |                 |
|------------------------|---------------------------|-----------------|--------------------------|-----------------|
|                        | <i>Easting</i>            | <i>Northing</i> | <i>Easting</i>           | <i>Northing</i> |
| S20                    | 301475                    | 353692          | 301561                   | 353647          |
| S21                    | 300739                    | 353256          | 300770                   | 353343          |
| S22                    | 301295                    | 353259          | 301297                   | 353291          |
| S23                    | 302199                    | 353104          | 302358                   | 353159          |
| S24                    | 300686                    | 352482          | 300610                   | 352531          |
| S25                    | 301716                    | 352540          | 301717                   | 352591          |
| S26                    | 301268                    | 352594          | 301193                   | 352528          |
| S27                    | 302263                    | 351904          | 302723                   | 352077          |
| S28                    | 300841                    | 352162          | 300841                   | 352161          |
| S29                    | 301235                    | 351963          | 301198                   | 351850          |
| S30                    | 301378                    | 351623          | 301382                   | 351501          |
| S31                    | 301678                    | 350884          | 300880                   | 350721          |
| S32                    | 301301                    | 350647          | 301232                   | 350505          |
| SMM1                   | 299997                    | 356584          | 299893                   | 356575          |
| SMM2                   | 300653                    | 351909          | 300734                   | 351823          |

#### Existing tracks subject to improvement and widening

| <i>Access track no</i> | <i>Commencement point</i> |                 | <i>Termination point</i> |                 |
|------------------------|---------------------------|-----------------|--------------------------|-----------------|
|                        | <i>Easting</i>            | <i>Northing</i> | <i>Easting</i>           | <i>Northing</i> |
| E1                     | 300890                    | 358336          | 301051                   | 358313          |
| E2                     | 301051                    | 358313          | 301375                   | 358861          |
| E5                     | 300649                    | 357389          | 300023                   | 357656          |
| E6                     | 300635                    | 357032          | 301001                   | 356966          |
| E7                     | 301001                    | 356966          | 301122                   | 357097          |
| E8                     | 300624                    | 357064          | 300325                   | 356915          |
| E9                     | 300330                    | 356917          | 300224                   | 356913          |
| E10                    | 300224                    | 356913          | 299997                   | 356584          |
| E11                    | 300781                    | 355353          | 301103                   | 355969          |
| E12                    | 301103                    | 355970          | 301343                   | 356415          |
| E13                    | 300570                    | 355106          | 300609                   | 354651          |
| E14                    | 300604                    | 354689          | 300695                   | 354798          |
| E15                    | 300695                    | 354798          | 301053                   | 354912          |
| E16                    | 301148                    | 354922          | 301442                   | 355081          |

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| <i>Access track no</i> | <i>Commencement point</i> |                 | <i>Termination point</i> |                 |
|------------------------|---------------------------|-----------------|--------------------------|-----------------|
|                        | <i>Easting</i>            | <i>Northing</i> | <i>Easting</i>           | <i>Northing</i> |
| E17                    | 300609                    | 354649          | 300728                   | 354115          |
| E18                    | 300706                    | 354150          | 301554                   | 354556          |
| E19                    | 300729                    | 354114          | 300659                   | 353686          |
| E20                    | 300658                    | 353686          | 300511                   | 353164          |
| E21                    | 300510                    | 353161          | 301845                   | 354063          |
| E22                    | 300510                    | 353161          | 300777                   | 353046          |
| E23                    | 300775                    | 353045          | 301194                   | 353212          |
| E24                    | 301197                    | 353212          | 301877                   | 353693          |
| E25                    | 301196                    | 353212          | 301707                   | 353255          |
| E26                    | 301709                    | 353255          | 301829                   | 353240          |
| E27                    | 301833                    | 353239          | 301908                   | 353231          |
| E28                    | 301895                    | 353232          | 302199                   | 353104          |
| E29                    | 301731                    | 353137          | 301309                   | 352690          |
| E30                    | 301310                    | 352692          | 300686                   | 352482          |
| E31                    | 301311                    | 352692          | 301191                   | 352457          |
| E32                    | 301191                    | 352456          | 301307                   | 352227          |
| E33                    | 301191                    | 352457          | 300653                   | 351909          |
| E34                    | 301307                    | 352227          | 301408                   | 352268          |
| E35                    | 301408                    | 352268          | 301552                   | 352563          |
| E36                    | 301549                    | 352557          | 301681                   | 352621          |
| E37                    | 301849                    | 352476          | 302224                   | 352055          |
| E38                    | 302225                    | 352055          | 302263                   | 351904          |
| E40                    | 301307                    | 352227          | 301187                   | 352084          |
| E41                    | 301233                    | 351978          | 301259                   | 351861          |
| E43                    | 301521                    | 351501          | 301693                   | 351263          |
| E46                    | 301678                    | 350885          | 301300                   | 350648          |
| E50                    | 300997                    | 356851          | 301018                   | 355898          |
| E51                    | 301047                    | 354916          | 301151                   | 354924          |
| E53                    | 301053                    | 357760          | 301515                   | 358109          |
| E54                    | 301682                    | 352621          | 301848                   | 352477          |
| E56                    | 301678                    | 350885          | 301693                   | 351263          |
| E57                    | 300023                    | 357656          | 299761                   | 357707          |

### Public roads subject to widening

| <i>Public road no</i> | <i>Commencement point</i> |                 | <i>Termination point</i> |                 |
|-----------------------|---------------------------|-----------------|--------------------------|-----------------|
|                       | <i>Easting</i>            | <i>Northing</i> | <i>Easting</i>           | <i>Northing</i> |
| PR1                   | 300744                    | 358778          | 300624                   | 357351          |
| PR2                   | 300624                    | 357351          | 300634                   | 357032          |
| PR3                   | 301085                    | 355555          | 300571                   | 355108          |
| PR5                   | 302454                    | 350166          | 301749                   | 351092          |

In constructing Work No. 3 the undertaker may—

- (a) provide temporary passing places for construction vehicles at any location along the line of the work shown on the works plan within the limits of deviation for Work No. 3; and
- (b) construct culverts to carry any watercourse under Work No. 3 and extend or replace any existing culvert to carry such a watercourse.

Work No. 4A – A widening of part of the of the unnamed public road shown as PR1 at X on Works Plan 1 to provide construction, maintenance and emergency site access commencing at Ordnance Survey National Grid Reference Point SJ0074458778.

Work No. 4B – A widening of part of the of the unnamed public road shown as PR5 at X on Works Plan 7 to provide construction, maintenance and emergency site access commencing at Ordnance Survey National Grid Reference Point SJ0245550165.

Work No. 5A – An onsite electricity substation comprising an enclosed area of hardstanding of 4080 square metres located at Ordnance Survey National Grid Reference Point SJ0136958813 and including a control building to house switch gear and control equipment.

Work No. 5B – An onsite electricity substation comprising an enclosed area of hardstanding of 4080 square metres located at Ordnance Survey National Grid Reference Point SJ0215150472 and including a control building to house switch gear and control equipment.

Work No. 6 – A meteorological mast for the purpose of monitoring and recording wind speed and direction as well as air temperature, having a height of 100 metres and sited on an area of hardstanding of 900 square metres and located at Ordnance Survey National Grid Reference Point SH9989356575. Work No. 6 includes a cable for the transmission of electronic communications from wind turbine No. 9 comprised in Work No. 1 along the line of existing track No. E10 and new spur track No. SMM1 comprised in Work No. 3.

Work No. 7 – A meteorological mast for the purpose of monitoring and recording wind speed and direction as well as air temperature, having a height of 100 metres and sited on an area of hardstanding of 900 square metres and located at Ordnance Survey National Grid Reference Point SJ0073551823. Work No. 7 includes a cable for the transmission of electronic communications along the line of existing track No. E33 from its junction with new spur track No. S28 and new spur track No. SMM2 comprised in Work No. 3.

Work No. 8 – A temporary civil construction compound comprising an enclosed area of hardstanding of 2500 square metres located at Ordnance Survey National Grid Reference Point SJ0095558354 and including a temporary office and staff welfare building together with an area for the storage of materials for use in the construction of the authorised development.

Work No. 9 – A temporary civil construction compound comprising an enclosed area of hardstanding of 2500 square metres located at Ordnance Survey National Grid Reference Point SJ0178451133 and including a temporary office and staff welfare building together with an area for the storage of materials for use in the construction of the authorised development.

Work No. 10 – A borrow pit for the extraction of stone to be used in the construction of the authorised development, having an area of 39,200 square metres and a depth of up to 18 metres located at Ordnance Survey National Grid Reference Point SJ0189157562.

Work No. 11 – A borrow pit for the extraction of stone to be used in the construction of the authorised development, having an area of approximately 13,600 square metres and a depth of up to 16 metres located at Ordnance Survey National Grid Reference Point SJ0246654106.

Work No. 12 – A borrow pit for the extraction of stone to be used in the construction of the authorised development, having an area of approximately 18,300 square metres and a depth of up to 20 metres located at Ordnance Survey National Grid Reference Point SJ0185151493.

Work No. 13 – A borrow pit for the extraction of stone to be used in the construction of the authorised development, having an area of approximately 11,300 square metres and a depth of up to 19 metres located at Ordnance Survey National Grid Reference Point SJ0078050630.

Work No. 14A – A temporary electrical compound comprising an enclosed area of hardstanding of 2500 square metres located adjacent to the onsite electricity substation forming Work No. 5A at Ordnance Survey National Grid Reference Point SJ0131558784.

Work No. 14B – A temporary electrical compound comprising an enclosed area of hardstanding of 2500 square metres located adjacent to the onsite electricity substation forming Work No. 5B at Ordnance Survey National Grid Reference Point SJ0219750429.

## PART 2

### Ancillary works

#### Highway works

1. Landscaping and clearance of vegetation required in connection with Work No. 3.

## PART 3

### Requirements

#### Definitions

1. In this Part of this Schedule—

“abnormal indivisible load” has the same meaning as in the Road Vehicles (Authorisation of Special Types) (General) Order 2003;

“commencement”, in relation to the authorised development, means the date on which the authorised development begins by the carrying out of a material operation as defined in section 155 of the 2008 Act and “commence” and “commenced” shall be construed accordingly;

“ecological clerk of works” means a suitably qualified environmental professional or group of professionals;

“European protected species” means a species listed in Schedules 2 or 5 of the Conservation of Habitats and Species Regulations 2010;

“felling” means any felling or lopping undertaken pursuant to article 28 (felling or lopping of trees) of this Order;

“first export date” means the date the authorised development first exports electricity on a commercial basis;

“Noise Guidance” means the guidance in Part 4 of this Schedule;

“NRW” means Natural Resources Wales;

“site” means land within the Order limits;

“stakeholder group” means the representatives of organisations which will advise on the measures within the habitat management plan and the implementation of those measures;

“TMFGL” means Tir Mostyn and Foel Goch Limited (reg no 5264934) or the owner from time to time of the Tir Mostyn and Foel Goch Wind Farm;

“Welsh devolved function” has the meaning given by section 36 of the Public Bodies Act 2011; and

“wind turbines” means the wind turbines forming part of Work No. 1 and “wind turbine” shall be construed accordingly.

### **Submission and approval of details**

2. Where, under any Requirement, details or a scheme or plan are to be submitted for the approval of the relevant planning authority then unless the Requirement provides otherwise—

- (a) those details or scheme or plan and that approval must be in writing,
- (b) the details, scheme or plan must be implemented as approved, and
- (c) the approved details, scheme or plan are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority, provided that no amendments may be approved by the relevant planning authority where such amendments may give rise to any materially different environmental effects to those assessed in the environment statement and that where under any Requirement there is an obligation to consult with a third party prior to the submission of any details, scheme or plan for approval to the relevant planning authority then there shall be an obligation to consult with the same third party prior to the submission of any amendments to the approved details, scheme or plan to the relevant planning authority.

### **Time limits**

3. The authorised development must be commenced within 5 years of the date of this Order.

### **Expiry of development consent**

4. (1) The development consent granted by this Order expires 25 years after the first export date.
- (2) Confirmation of the first export date must be provided by the undertaker to the relevant planning authority within one month of its occurrence.

### **Decommissioning and site restoration**

5. (1) Not less than 12 months before the expiry of the development consent granted by this Order, a decommissioning and site restoration scheme must be submitted to the relevant planning authority for its approval.

- (2) The decommissioning and site restoration scheme must include provision for—
  - (a) removal of all above-ground elements of the authorised development (with the exception of Work No. 3 and Work No.4A or 4B),
  - (b) removal of turbine bases and cabling to one metre below ground level, and

(c) restoration of the disturbed areas.

(3) Decommissioning and restoration must be completed in accordance with the approved decommissioning and site restoration scheme within the period set out in the approved scheme.

#### **Failure of turbines**

6. (1) If any wind turbine fails to provide electricity to the grid for a continuous period of 12 months the undertaker must—

- (a) notify the relevant planning authority within one month of the expiry of that 12 month period;
- (b) if so instructed by the relevant planning authority, submit to the relevant planning authority within 2 months of that instruction a detailed scheme setting out how the wind turbine and its associated ancillary equipment, including cabling (but excluding the turbine bases and cabling more than one metre below ground level) is to be removed from the Order limits and how the disturbed areas will be restored, and
- (c) implement the approved scheme no later than 6 months from its approval unless a longer period is agreed in writing by the relevant planning authority.

(2) The agreement of the relevant planning authority in paragraph (1)(c) may only be given in relation to immaterial changes where the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

#### **Plans**

7. (1) Subject to the power to deviate set out in article 6 (power to deviate) and any other Requirement the authorised development is to be carried out in accordance with the plans or other documents certified in accordance with article 36 (certification of plans etc).

(2) No wind turbine may be constructed—

- (a) within 50m from the highest point of existing and new forest edge, when measured from the closest part of the rotor sweep of any wind turbine; and
- (b) within 50m of any watercourse shown on Figure 8.1 of the environmental statement.

(3) Subject to the requirements of paragraph (2), no other part of the authorised development with the exception of road widening and culverting may be carried out within 30m of any watercourse shown on Figure 8.1 of the environmental statement unless shown on the plans or other documents certified in accordance with article 36 or unless approved by the relevant planning authority.

(4) The approval of the relevant planning authority in paragraph (2) may only be given in relation to immaterial changes where the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

#### **Construction traffic management plan**

8. (1) No authorised development may commence until, following consultation with the Department of Transport of the Welsh Government and any relevant highway authority, a construction traffic management plan has been submitted to and approved by the relevant planning authority.

(2) The construction traffic management plan in paragraph (1) must include—

- (a) construction vehicle routing plans,
- (b) site access plans,



- (c) details of the management of junctions to and crossings of the public highway and other public rights of way,
  - (d) details of the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads,
  - (e) details of escorts for abnormal indivisible loads,
  - (f) details of temporary warning signs and banksman and escort details,
  - (g) proposals for assessing the existing condition of affected highways,
  - (h) details of any temporary or permanent improvements to the public highway,
  - (i) details of the implementation and management of temporary passing places along the B4501 and the unnamed road into the Site,
  - (j) details for the making good of any incidental damage to highways by construction traffic associated with the authorised project including street furniture, structures, drainage features, highway verge and carriageway surfaces, and
  - (k) details of the maintenance of access to TMFG wind farm from the B4501 during the construction period of any works to the B4501 in connection with the authorised development together with details of the maintenance of access to clusters B and C of the TMFG wind farm along highways PR1 and PR2 shown on the access plan during the construction of the authorised development.
- (3) The construction traffic management plan must be implemented as approved.
- (4) Before any wind turbine is removed or replaced a revised construction traffic management plan, dealing with that removal or replacement, must be submitted to and approved by the relevant planning authority.

### **Construction method statement**

9. (1) No authorised development may commence until, following consultation with NRW, a construction method statement has been submitted to and approved by the relevant planning authority.

(2) The construction method statement in paragraph (1) must be based on the principles set out in the Outline Construction Method Statement, included as Annex 3.1 to the environmental statement, and include the following plans as appendices—

- (a) Construction Environmental Management Plan;
  - (b) Waste Management Plan;
  - (c) Emergency Response Plan;
  - (d) Soil and Peat Management Plan;
  - (e) Borrow Pit Design and Site Restoration Plan;
  - (f) any relevant Species Protection Plans; and
  - (g) Surface Water Management Plan.
- (3) The construction method statement in paragraph (1) must include details of—
- (a) roles and responsibilities and accountabilities for the multi-discipline team of engineering construction and environment staff,
  - (b) mitigation measures to avoid harm to relevant protected species and minimise damage to relevant habitats,
  - (c) the timing of construction works, including the timing of vegetation removal to avoid the potential for effects on protected species including reptiles and nesting birds,

- (d) the vehicle washing facilities, including siting if required to be undertaken on site,
- (e) the timing of works and methods of working for cable trenches, foundation works and erection of the wind turbines,
- (f) the timing of works and construction of the substation/control buildings and anemometry mast,
- (g) the cleaning of site accesses, site tracks and the adjacent public highway and the sheeting of all heavy goods vehicles taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway,
- (h) the pollution control and prevention measures including—
  - (i) sediment control measures,
  - (ii) measures for the bunding of fuel, oil and chemical storage areas,
  - (iii) sewage disposal measures,
  - (iv) measures for the protection of water courses and ground water and soils,
  - (v) a programme for monitoring private water supplies, water courses and water bodies before and during the authorised project, including details of the action to be taken if monitoring indicates adverse effects on private water supplies, water courses or water bodies,
- (i) the management of waste arisings,
- (j) the management of construction noise (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out, mitigation measures and a scheme for the monitoring of noise),
- (k) a routing strategy to ensure that construction vehicles use agreed routes,
- (l) the handling, storage and re-use on site of excavated top soil,
- (m) the handling, storage and management of any peat excavated,
- (n) the design and construction methods of Works No. 3, and 4A or 4B, including drainage provisions, and the pollution prevention measures to be implemented to ensure there are no polluting discharges from tracks and disturbed areas including provision to ensure that no polluting discharge from those Works and disturbed areas enters any watercourse,
- (o) access track construction and widening including the nature, type and quantity of materials to be imported on site for backfilling operations or construction of access tracks,
- (p) the management of groundwater and surface water (including mitigation to protect water bodies, water courses and private water supplies),
- (q) the management of dust generation during excavations and soil handling,
- (r) the proposed location of temporary site compounds for storage of materials, machinery and parking within the sites clear of the highway, including the siting of the temporary buildings and all means of enclosure, oil/fuel and chemical storage and any proposals for temporary lighting, and details of proposals for restoration of the sites of the temporary compounds and works within 12 months of the first export date,
- (s) the design and construction of any culverts upgrades or replacements,
- (t) the method of borrow pit working including means of extraction, handling, storage and re-use of soil, drainage control and restoration,
- (u) the protocols and programme for any required environmental monitoring to be made publicly available on an annual basis,
- (v) the restoration of the site which will be temporarily used for construction, and

- (w) the proposed communications protocol and the mechanism for investigating complaints, including the action to be taken where complaint investigations indicate materially adverse effects have occurred as a result of the construction of the authorised project.
- (4) Before any wind turbine is removed or replaced a revised construction method statement, dealing with that removal or replacement, shall be submitted to and approved by the relevant planning authority.
- (5) The construction method statement shall be implemented as approved.

### **Highways**

**10.** No wind turbine parts may be delivered to the site before detailed plans and drawings in respect of Work No. 4A or 4B (whichever is decided on by the undertaker) have been submitted to and approved by the relevant planning authority and such works have been constructed in accordance with the plans and drawings so approved.

**11.** The authorised development may not commence until, following consultation with the Department for Transport of the Welsh Government and any relevant highway authority, details of temporary or permanent improvements to the public highway have been submitted to and approved by the relevant planning authority. The improvement works are to be implemented in accordance with the approved details.

**12.** The authorised development may not commence until following consultation with the Department for Transport of the Welsh Government and any relevant highway authority details of the reinstatement of the public highway and its associated street furniture following completion of the construction of the authorised development have been submitted to and approved by the relevant planning authority. The reinstatement works are to be implemented in accordance with the approved details.

### **Construction hours**

**13.** (1) The hours of work during the construction phase of the authorised development and any traffic movements into and out of the site associated with the construction or maintenance of the authorised development shall be 0700 to 1900 hours on Mondays to Fridays and 0700 to 1300 hours on Saturdays other than as allowed for under paragraph (2). No work may take place outside these hours, or on public holidays, unless otherwise previously agreed by the relevant planning authority.

(2) Delivery of turbine and delivery and assembly of crane components and other critical operations may take place outside the times specified in paragraph (1), if approved by the relevant planning authority.

**14.** With respect to paragraph (2) of Requirement 13, such approval may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority that the approval is unlikely to give rise to any materially new or materially different effects from construction or maintenance activities taking place on the days and hours set out in those clauses.

### **Habitat management plan**

**15.** (1) No authorised development may commence until, following consultation with NRW, a detailed habitat management plan has been submitted to and approved by the relevant planning authority.

(2) The detailed habitat management plan in paragraph (1) is to be based on the key objectives and principles set out in the outline habitat management plan included as Annex 9.10 to the environmental statement.

- (3) The habitat management plan in paragraph (1) must include measures to—
- (a) establish and manage heathland habitat,
  - (b) restore and manage peatland habitat,
  - (c) establish and manage suitable habitat for dormice,
  - (d) contribute to grey squirrel control,
  - (e) establish and manage suitable habitat for black grouse and nightjar,
  - (f) monitor the effect of the authorised development and the effectiveness of habitat management upon bats, dormice, black grouse and heathland/peatland habitats. If, following consideration of monitoring results the relevant planning authority believes it is necessary to do so, management prescriptions included in the habitat management plan will be reviewed as necessary,
  - (g) monitor the effect of the authorised development upon nightjars. If, following consideration of monitoring results the relevant planning authority believes it is necessary to do so, implement the mitigation measures set out in the environmental statement. The measures shall include undertaking a study of nightjar churring against weather conditions prior to construction commencing to inform detailed mitigation proposals, and
  - (h) establish the membership, terms of reference and provisions for the management of the proposed stakeholder group.
- (4) The habitat management plan is to be implemented as approved.

#### **Access management plan**

**16.** (1) No authorised development shall commence until, following consultation with NRW, an access management plan has been submitted to and approved by the relevant planning authority.

- (2) The access management plan must include—
- (a) details of the temporary re-routing of public rights of way during construction of the authorised development,
  - (b) details of the permanent re-routing of FP19 prior to the operational phase,
  - (c) details of the provision of signage and other information alerting the public to construction works,
  - (d) details of any fencing or barriers to be provided during the construction period,
  - (e) details as to how public rights of way, paths and roads will be inspected prior to and monitored during the construction period,
  - (f) a commitment to return all public rights of way, paths and roads to the same condition as they were, or better, once the construction period has ceased,
  - (g) details as to how any paths found to be impassable during surveying will be cleared,
  - (h) details of temporary alternative routes for any public rights of way that need to be diverted,
  - (i) details of funds for improved signage/orientation,
  - (j) details as to the provision of a new way-marked route for the life of the development,
  - (k) details of a communications campaign linked with the end of the construction period,
  - (l) details of an active management plan for crossing points for public rights of way during the construction works, and
  - (m) details of permissive routes to be provided within the public access management areas during the construction phase.

(3) The access management plan is to be implemented as approved by the relevant planning authority.

### **Felling**

**17.** (1) All felling must be undertaken in accordance with the relevant guidance specified in paragraph (2) and NRW best practice (as amended from time to time).

(2) The relevant guidance is—

- (a) The UK Forestry Standard;
- (b) UKFS Guidelines – Forests and Water (2011);
- (c) UKFS Guidelines – Forests and Soil (2011);
- (d) UKFS Guidelines – Forests and Biodiversity (2011); and
- (e) UKFS Guidelines – Forests and Historic Environment (2011).

### **Appearance**

**18.** The wind turbines may not be erected until details of their external appearance and colour and surface finish and the design and appearance of the associated external transformer/switchgear units (if any) have been submitted to and approved by the relevant planning authority. The authorised development must be completed in accordance with the approved details.

**19.** Notwithstanding any design or colour approved by the relevant planning authority pursuant to Requirement 18, all wind turbines must be of a 3 bladed configuration and of a semi-matt finish.

**20.** (1) No wind turbine may display any name, sign, symbol or logo on any external surface, unless such name, sign, symbol or logo has been approved in writing by the relevant planning authority.

(2) Paragraph (1) of this Requirement does not apply to any name, sign, symbol or logo required by law or for health and safety reasons.

**21.** All wind turbines' blades are to rotate in the same direction. Without prejudice to Requirement 28 the wind turbines may not be illuminated, save for a sensor-operated access light.

**22.** Before construction of Work No. 5A or 5B, details of the external design, appearance and finish of the substation and any associated hard standing areas, and the electrical compound must be submitted to and approved by the relevant planning authority. The authorised development is to be completed in accordance with the approved details.

### **Shadow flicker**

**23.** The authorised development may not commence until a scheme for the avoidance of any shadow flicker effect at any dwelling which lawfully existed or had planning permission at the date of this Order has been submitted to and approved by the relevant planning authority. The scheme must include a time limit for the investigation of complaints, and for the implementation of mitigation measures. The scheme is to be implemented as approved.

### **Archaeology**

**24.** (1) No authorised development may commence until a scheme of archaeological investigation has been submitted to and approved by the relevant planning authority.

(2) The scheme of archaeological investigation must incorporate—

- (a) a walkover survey before commencement of the authorised development;

- (b) fencing to be provided around Twr yr Hill round barrow and Maen Cred standing stone during construction works;
  - (c) where presence of archaeological remains is established a watching brief will be undertaken during construction to record the surviving archaeological remains;
  - (d) a watching brief during construction of all other infrastructure to record any previously unknown archaeological remains that may be present; and
  - (e) proposed peat core sampling.
- (3) The scheme of archaeological investigation shall be implemented as approved.

#### **Ecological clerk of works**

25. (1) No authorised development may commence until, following consultation with NRW and approval by the relevant local planning authority, an ecological clerk of works has been appointed.

(2) An ecological clerk of works is to be retained throughout the duration of civil construction works on site to advise on minimising ecological effects of the construction activities.

#### **Surface water drainage**

26. (1) No authorised development may commence until, following consultation with NRW, details of the surface water drainage system (including means of pollution control) have been submitted to and approved by the relevant planning authority.

(2) The details of the surface water drainage system submitted under paragraph (1) must accord with the Outline Surface Water Management Plan at Annex 8.1 of the environmental statement to ensure that existing runoff regimes are maintained where possible and no increase in peak runoff is experienced within receiving watercourses as a consequence of the authorised development and shall include a mechanism to establish a baseline for the existing surface water drainage conditions.

(3) The surface water drainage system is to be constructed in accordance with the approved details.

#### **Accumulation and deposits**

27. (1) No authorised development may commence until, following consultation with NRW, a written scheme for the management of any accumulations and deposits has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management of accumulations and deposits is to be implemented before and maintained during the construction, operation and decommissioning of the authorised development.

#### **Infra-red aviation lighting**

28. No wind turbine shall be erected until, following consultation with the Ministry of Defence, details of the installation of infra-red aviation warning lights have been submitted to and approved by the relevant planning authority. The lights must be installed in accordance with the approved details and maintained until the wind turbines are decommissioned in accordance with Requirements.

#### **Defence Geographic Centre**

29. No wind turbine may be erected before information on the accurate location of the wind turbines has been provided to the Defence Geographic Centre of the Ministry of Defence.

## Noise

30. (1) The level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty), when calculated in accordance with the Noise Guidance, may not exceed the values set out in Table 1 below. Noise limits for dwellings which lawfully existed or had planning permission at the date of this Order and which are not listed in Table 1 are to be those of the physically closest location listed in Table 1 below, unless otherwise agreed with the relevant planning authority. The coordinate locations to be used in determining the location of each of the dwellings listed in Table 1 are those listed in Table 2.

(2) The agreement of the relevant planning authority in paragraph (1) may only be given in relation to immaterial changes where the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

**Table 1**

**The  $L_{A90,10min}$  dB noise level**

| Location         | Standardised wind speed at 10 metre height (m/s) |      |      |      |      |      |      |      |      |      |      |      |
|------------------|--|------|------|------|------|------|------|------|------|------|------|------|
|                  | 1  | 2    | 3    | 4    | 5    | 6    | 7    | 8    | 9    | 10   | 11   | 12   |
| Bron Bannog      | 39.1   | 39.1 | 39.1 | 39.1 | 39.1 | 39.1 | 39.1 | 39.1 | 39.1 | 41.7 | 44.3 | 46.6 |
| Castell y Waen   | 30.8   | 30.8 | 30.8 | 30.8 | 30.8 | 30.8 | 30.8 | 30.8 | 31.9 | 33.5 | 35.1 | 36.7 |
| Cefn Rofft       | 36.7   | 36.7 | 36.7 | 36.7 | 36.7 | 36.7 | 36.7 | 36.7 | 39.0 | 42.3 | 45.6 | 48.8 |
| Cefnbannog       | 37.5   | 37.5 | 37.5 | 37.5 | 37.5 | 37.5 | 37.5 | 37.5 | 38.3 | 42.1 | 45.8 | 49.3 |
| Crud-y-Gwynt     | 39.3   | 39.3 | 39.3 | 39.3 | 39.3 | 39.3 | 39.3 | 39.9 | 41.0 | 42.3 | 43.8 | 45.4 |
| Cruglas          | 39.6   | 39.6 | 39.6 | 39.6 | 39.6 | 39.6 | 39.6 | 39.6 | 39.6 | 39.6 | 41.4 | 44.3 |
| Diffws           | 37.2   | 37.2 | 37.2 | 37.2 | 37.3 | 39.0 | 40.7 | 42.2 | 43.3 | 44.0 | 44.4 | 44.6 |
| Hafod Caradoc    | 32.0   | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.8 | 35.4 | 38.1 | 40.8 |
| Hafod Ty Ddu     | 32.0   | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 35.1 | 39.2 | 42.6 | 45.7 | 48.8 |
| Hafotty Newydd   | 38.7   | 38.7 | 38.7 | 38.7 | 38.7 | 38.7 | 38.7 | 38.7 | 38.9 | 41.7 | 44.5 | 47.2 |
| Plas Nant Glyn   | 28.2   | 28.2 | 28.2 | 28.2 | 28.2 | 28.2 | 28.2 | 28.2 | 28.2 | 28.2 | 28.2 | 28.2 |
| Tai'n-y-Waens    | 39.3   | 39.3 | 39.3 | 39.3 | 39.3 | 39.3 | 39.3 | 39.3 | 40.9 | 44.1 | 47.2 | 50.2 |
| Tal-y-cefn Uchaf | 39.2   | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 40.2 | 43.4 | 46.6 | 49.8 | 52.8 |
| Trawsnant        | 38.4   | 38.4 | 38.4 | 38.4 | 38.4 | 38.4 | 38.4 | 38.4 | 38.4 | 39.4 | 41.9 | 44.9 |
| Boced            | 35.1   | 35.1 | 35.1 | 35.1 | 35.1 | 35.1 | 35.1 | 35.1 | 35.1 | 36.1 | 38.6 | 41.5 |
| Bod Petryal      | 32.7   | 32.7 | 32.7 | 32.7 | 32.7 | 32.7 | 32.7 | 33.7 | 35.7 | 35.7 | 35.7 | 35.7 |
| Bryn Bach        | 34.2   | 34.2 | 34.2 | 34.2 | 34.2 | 34.2 | 34.2 | 34.2 | 34.2 | 35.2 | 37.7 | 40.7 |
| Bryn Gaseg       | 34.2   | 34.2 | 34.2 | 34.2 | 34.2 | 34.2 | 34.2 | 34.2 | 36.5 | 39.8 | 43.1 | 46.3 |
| Bryn-celyn       | 33.8   | 33.8 | 33.8 | 33.8 | 33.8 | 33.8 | 33.8 | 34.8 | 36.8 | 36.8 | 36.8 | 36.8 |
| Brynhyfryd       | 35.3   | 35.3 | 35.3 | 35.3 | 35.3 | 35.3 | 35.3 | 35.3 | 36.1 | 39.9 | 43.6 | 47.1 |
| Bryn-y-gwrgi     | 37.6   | 37.6 | 37.6 | 37.6 | 37.6 | 37.6 | 37.6 | 37.6 | 39.3 | 42.5 | 45.6 | 48.6 |

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| Location        | Standardised wind speed at 10 metre height (m/s) |      |      |      |      |      |      |      |      |      |      |      |
|-----------------|--|------|------|------|------|------|------|------|------|------|------|------|
|                 | 1  | 2    | 3    | 4    | 5    | 6    | 7    | 8    | 9    | 10   | 11   | 12   |
| Bryn-yr-eryr    | 33.1   | 33.1 | 33.1 | 33.1 | 33.1 | 33.1 | 33.1 | 33.1 | 35.5 | 38.8 | 42.1 | 45.3 |
| Capel Hiraethog | 38.2   | 38.2 | 38.2 | 38.2 | 38.2 | 38.2 | 38.2 | 38.2 | 38.2 | 38.2 | 40.0 | 42.9 |
| Derwydd         | 35.2   | 35.2 | 35.2 | 35.2 | 35.2 | 35.2 | 35.2 | 35.2 | 37.6 | 40.8 | 44.2 | 47.4 |
| Drws-y-Buddel   | 31.7   | 31.7 | 31.7 | 31.7 | 31.7 | 31.7 | 31.7 | 31.7 | 31.7 | 32.7 | 35.2 | 38.2 |
| Foel            | 36.1   | 36.1 | 36.1 | 36.1 | 36.1 | 36.1 | 36.1 | 36.1 | 38.5 | 41.7 | 45.1 | 48.3 |
| Garreg-Iwyd     | 32.0   | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 33.4 | 36.1 | 38.8 |
| Glan-y-gors     | 34.7   | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 37.3 | 39.9 | 42.2 |
| Hafod Olygfa    | 32.0   | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 34.6 | 38.7 | 42.1 | 45.2 | 48.3 |
| Hafotty Bach    | 36.3   | 36.3 | 36.3 | 36.3 | 36.3 | 36.3 | 36.3 | 36.3 | 36.3 | 37.3 | 39.9 | 42.8 |
| Hafotty Hendre  | 39.6   | 39.6 | 39.6 | 39.6 | 39.6 | 39.6 | 39.6 | 39.6 | 41.2 | 44.4 | 47.5 | 50.5 |
| Isgaer-wen      | 38.0   | 38.0 | 38.0 | 38.0 | 38.0 | 38.0 | 38.0 | 38.0 | 38.2 | 41.0 | 43.8 | 46.5 |
| Lodge Isaf      | 35.5   | 35.5 | 35.5 | 35.5 | 35.5 | 35.5 | 35.5 | 35.5 | 36.3 | 40.1 | 43.9 | 47.3 |
| Lodge Uchaf     | 35.7   | 35.7 | 35.7 | 35.7 | 35.7 | 35.7 | 35.7 | 35.7 | 36.5 | 40.3 | 44.0 | 47.5 |
| Maes Cadarn     | 37.8   | 37.8 | 37.8 | 37.8 | 37.8 | 37.8 | 37.8 | 37.8 | 37.8 | 37.8 | 39.6 | 42.5 |
| Nant Uchaf      | 38.1   | 38.1 | 38.1 | 38.1 | 38.1 | 38.1 | 38.1 | 38.1 | 38.1 | 39.1 | 41.6 | 44.6 |
| Pantdedwydd     | 36.6   | 36.6 | 36.6 | 36.6 | 36.6 | 36.6 | 36.6 | 36.6 | 38.9 | 42.2 | 45.5 | 48.7 |
| Pedair-a-dimai  | 31.9   | 31.9 | 31.9 | 31.9 | 31.9 | 31.9 | 31.9 | 31.9 | 34.3 | 37.6 | 40.9 | 44.1 |
| Pen-Bedw        | 35.5   | 35.5 | 35.5 | 35.5 | 35.5 | 35.5 | 35.5 | 35.5 | 35.5 | 36.5 | 39.0 | 41.9 |
| Pennant         | 38.3   | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 40.1 | 43.0 |
| Pennant Uchaf   | 32.5   | 32.5 | 32.5 | 32.5 | 32.5 | 32.5 | 32.5 | 32.5 | 32.5 | 34.6 | 37.3 | 40.0 |
| Pen-y-bryn      | 35.2   | 35.2 | 35.2 | 35.2 | 35.2 | 35.2 | 35.2 | 36.2 | 38.2 | 38.2 | 38.2 | 38.2 |
| Pen-y-Lan       | 37.4   | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 38.4 | 40.9 | 43.8 |
| Seler           | 38.3   | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 39.3 | 41.8 | 44.8 |
| Tai Ucha        | 38.2   | 38.2 | 38.2 | 38.2 | 38.2 | 38.2 | 38.2 | 38.2 | 38.2 | 39.2 | 41.7 | 44.7 |
| Tai'n-y-graig   | 37.7   | 37.7 | 37.7 | 37.7 | 37.7 | 37.7 | 37.7 | 38.7 | 41.8 | 45.0 | 48.2 | 51.3 |
| Tal y Cefn Isaf | 38.8   | 38.8 | 38.8 | 38.8 | 38.8 | 38.8 | 38.8 | 38.8 | 40.5 | 43.7 | 46.8 | 49.8 |
| Tan-y-bwlch     | 34.8   | 34.8 | 34.8 | 34.8 | 34.8 | 34.8 | 34.8 | 35.8 | 37.8 | 37.8 | 37.8 | 37.8 |
| Ty Newydd       | 32.0   | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 32.0 | 33.8 | 36.5 | 39.2 |
| Ty-nant         | 37.7   | 37.7 | 37.7 | 37.7 | 37.7 | 37.7 | 37.7 | 37.7 | 40.1 | 43.4 | 46.7 | 49.9 |
| Ty'n-y-ffordd   | 30.5   | 30.5 | 30.5 | 30.5 | 30.5 | 30.5 | 30.5 | 30.5 | 32.9 | 36.2 | 39.5 | 42.7 |
| Ty-Uchaf        | 37.8   | 37.8 | 37.8 | 37.8 | 37.8 | 37.8 | 37.8 | 37.8 | 38.0 | 40.8 | 43.6 | 46.4 |
| Waen Ganol      | 37.5   | 37.5 | 37.5 | 37.5 | 37.5 | 37.5 | 37.5 | 37.5 | 37.5 | 40.1 | 42.7 | 45.0 |
| Waen Ganol2     | 37.2   | 37.2 | 37.2 | 37.2 | 37.2 | 37.2 | 37.2 | 37.2 | 37.2 | 39.8 | 42.4 | 44.7 |



| <i>Location</i> | <i>Standardised wind speed at 10 metre height (m/s)</i> |          |          |          |          |          |          |          |          |           |           |           |
|-----------------|---|----------|----------|----------|----------|----------|----------|----------|----------|-----------|-----------|-----------|
|                 | <i>1</i>  | <i>2</i> | <i>3</i> | <i>4</i> | <i>5</i> | <i>6</i> | <i>7</i> | <i>8</i> | <i>9</i> | <i>10</i> | <i>11</i> | <i>12</i> |
| Waen Uchaf      | 38.5  | 38.5     | 38.5     | 38.5     | 38.5     | 38.5     | 38.5     | 38.5     | 38.5     | 41.1      | 43.7      | 46.0      |
| Wern Uchaf      | 27.3  | 27.3     | 27.3     | 27.3     | 27.3     | 27.3     | 27.5     | 29.5     | 31.8     | 34.3      | 37.0      | 39.7      |

**Table 2****Coordinate locations of the properties listed in Table 1**

| <i>Property</i>  | <i>Easting</i> | <i>Northing</i> |
|------------------|----------------|-----------------|
| Bron Bannog      | 303230         | 352830          |
| Castell y Waen   | 299803         | 362240          |
| Cefn Rofft       | 300882         | 349754          |
| Cefnbannog       | 302337         | 351034          |
| Crud-y-Gwynt     | 302463         | 354928          |
| Cruglas          | 302917         | 353853          |
| Diffws           | 302388         | 357614          |
| Hafod Caradoc    | 298722         | 359204          |
| Hafod Ty Ddu     | 301570         | 359341          |
| Hafotty Newydd   | 300176         | 354208          |
| Plas Nant Glyn   | 300377         | 361202          |
| Tai'n-y-Waens    | 299856         | 351666          |
| Tal-y-cefn Uchaf | 299732         | 352723          |
| Trawsnant        | 302393         | 356134          |
| Boced            | 302976         | 358286          |
| Bod Petryal      | 303760         | 351073          |
| Bryn Bach        | 302098         | 358784          |
| Bryn Gaseg       | 300677         | 349373          |
| Bryn-celyn       | 302053         | 349903          |
| Brynhyfryd       | 303561         | 351370          |
| Bryn-y-gwrgi     | 299592         | 350697          |
| Bryn-yr-eryr     | 300984         | 349178          |
| Capel Hiraethog  | 303741         | 354707          |
| Derwydd          | 300348         | 349609          |
| Drws-y-Buddel    | 302225         | 359813          |
| Foel             | 299701         | 350042          |
| Garreg-Iwyd      | 300264         | 359607          |

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| <i>Property</i> | <i>Easting</i> | <i>Northing</i> |
|-----------------|----------------|-----------------|
| Glan-y-gors     | 304906         | 351677          |
| Hafod Olygfa    | 301400         | 359413          |
| Hafotty Bach    | 303271         | 357991          |
| Hafotty Hendre  | 300246         | 351304          |
| Isgaer-wen      | 299620         | 354471          |
| Lodge Isaf      | 303100         | 351300          |
| Lodge Uchaf     | 302715         | 351159          |
| Maes Cadarn     | 303961         | 355254          |
| Nant Uchaf      | 302894         | 355876          |
| Pantdedwydd     | 301360         | 349728          |
| Pedair-a-dimai  | 300207         | 349245          |
| Pen-Bedw        | 303639         | 357401          |
| Pennant         | 303922         | 354677          |
| Pennant Uchaf   | 299059         | 359533          |
| Pen-y-bryn      | 301707         | 349724          |
| Pen-y-Lan       | 303807         | 356760          |
| Seler           | 302815         | 355559          |
| Tai Ucha        | 302775         | 356368          |
| Tai'n-y-graig   | 298676         | 352289          |
| Tal y Cefn Isaf | 299388         | 352000          |
| Tan-y-bwlch     | 301894         | 349893          |
| Ty Newydd       | 299434         | 359360          |
| Ty-nant         | 300215         | 350152          |
| Ty'n-y-ffordd   | 299922         | 349210          |
| Ty-Uchaf        | 299007         | 353971          |
| Waen Ganol      | 304136         | 353152          |
| Waen Ganol2     | 304169         | 352986          |
| Waen Uchaf      | 303718         | 353376          |
| Wern Uchaf      | 298304         | 360149          |

**Note to Table 2:** The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

**31.** Within 21 days from the receipt of a written request from the relevant planning authority and following a complaint to the relevant planning authority from the occupant of a dwelling which lawfully existed or had planning permission at the date this Order came into force, the

undertaker must, at its own expense, employ an independent consultant approved by the relevant planning authority to assess the level of noise immissions from the authorised development at the complainant's property following the procedures described in the Noise Guidance in Part 4.

**32.** The undertaker must, if directed by the relevant planning authority, switch off any of the wind turbines in order to assess compliance with the noise limits.

**33.** The undertaker must provide to the relevant planning authority the independent consultant's assessment and conclusions regarding the noise complaint, including all calculations, audio recordings and the raw data upon which those assessments and conclusions are based. Such information must be provided within 3 months of the date of the written request of the relevant planning authority unless otherwise extended in writing by the relevant planning authority.

**34.** The undertaker must continuously log wind speed wind direction and power generation at each of the turbines on the site relating to authorised development. The undertaker must continuously log wind speed and wind direction at all anemometer masts on the site. The undertaker must provide all logged data to the relevant planning authority at its written request and in accordance with the Noise Guidance within 28 days of such request. All data is to be retained until the commencement of a decommissioning and site restoration scheme under Requirement 5.

**35.** (1) No authorised development may commence until an assessment demonstrating that noise from the electrical substation on the site would not exceed a level of 30 dB  $L_{Aeq}$  at the nearest residential property has been submitted to and approved in writing by the relevant planning authority.

(2) The substation is to be constructed in accordance with the approved assessment.

## PART 4

### Noise Guidance for Requirements 30 to 35

**1.** (1) Values of the  $L_{A90,10min}$  noise statistic shall be measured at the complainant's property using a sound level meter of EN 60651/BS EN 60804 Type 1, or EN 61672 Class 1 quality (or the replacement thereof) set to measure using a fast time A-weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This shall be calibrated in accordance with the procedure specified in BS 4142:1997 (or its replacement). These measurements shall be made in such a way that the requirements of paragraph 3 shall also be satisfied.

(2) The microphone should be mounted at 1.2 to 1.5 m above ground level, fitted with a two layer windshield (or suitable alternative approved in writing from the relevant planning authority), and placed outside the complainant's dwelling. Measurements should be made in "free-field" conditions. To achieve this, the microphone should be placed at least 3.5m away from the building facade or any reflecting surface except the ground at a location that shall be agreed with the relevant planning authority.

(3) The  $L_{A90,10min}$  measurements shall be synchronised with measurements of the 10-minute arithmetic mean average wind speed and with operational data, including power generation information for each wind turbine, from the turbine control systems of the authorised development.

(4) The undertaker shall continuously log arithmetic mean wind speed and arithmetic mean wind direction data in 10 minute periods from the hub height of anemometers located on the site permanent mast unless otherwise requested by the relevant planning authority to enable compliance with the requirements to be evaluated. The mean wind speed data shall be 'standardised' to a reference height

of 10 metres as described in ETSU-R-97(23) at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10m height wind speed data which is correlated with the noise measurements of paragraph 2(1) in the manner described in paragraph 2(3).

2. (1) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in sub-paragraph (2). Such measurements shall provide valid data points for the range of wind speeds, wind directions, times of day and power generation requested by the relevant planning authority. In specifying such conditions the relevant planning authority shall have regard to those conditions which were most likely to have prevailed during times when the complainant alleges there was disturbance due to noise. At its request the undertaker shall provide within 28 days of the completion of the measurements all of the data collected under Requirement 31 to the relevant planning authority.

(2) Valid data points are those measured in the climatic conditions specified by the relevant planning authority but excluding periods of rain. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in paragraph 1(3) and is situated in the vicinity of the sound level meter.

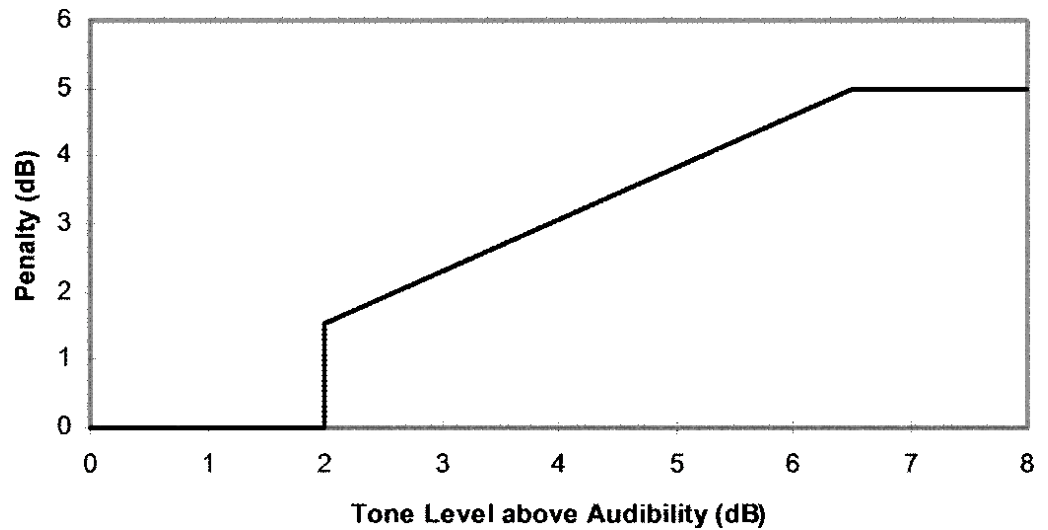
(3) A least squares, “best fit” curve of a maximum 4<sup>th</sup> order polynomial or otherwise as may be agreed with the relevant planning authority shall be fitted between the standardised mean wind speed (as defined in paragraph 1(4)) plotted against the measured  $L_{A90,10min}$  noise level. The noise level at each integer speed shall be derived from this best-fit curve.

3. Where, in the opinion of the relevant planning authority, noise immissions at the location or locations where assessment measurements are being undertaken contain a tonal component, the following rating procedure shall be used—

- (a) for each 10-minute interval for which  $L_{A90,10min}$  data have been obtained as provided for in paragraph 1, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods shall be regularly spaced at 10-minute intervals provided that uninterrupted clean data are available. Where clean data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from standard procedure as described in Section 2.1 on pages 104 – 109 of ETSU-R-97 shall be reported;
- (b) for each of the 2-minute samples the margin above or below the audibility criterion of the tone level difference,  $\#L_{tm}$  (Delta  $L_{tm}$ ), shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97;
- (c) the margin above audibility shall be plotted against wind speed for each of the 2-minute samples. For samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted;
- (d) a linear regression shall then be performed to establish the margin above audibility at the assessed wind speed for each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic average shall be used;
- (e) the tonal penalty shall be derived from the margin above audibility of the tone according to the figure below. The rating level at each wind speed shall be calculated as the arithmetic sum of the measured noise level from the authorised development, as determined from the best-fit curve described in paragraph 2, and the penalty for tonal noise.

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(23) “The Assessment and Rating of Noise from Wind Farm” (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).



4. If the measured noise level from the authorised development (including the application of any tonal penalty as per paragraph 3) is above the limit set out in the requirements, measurements of the influence of background noise shall be made to determine whether or not there is a breach of Requirement 30 or 35. This may be achieved by repeating the steps in paragraphs 1 and 2 with all of the wind turbines switched off in order to determine the background noise,  $L_3$ , at the assessed wind speed. The wind turbine noise at this wind speed,  $L_1$ , is then calculated as follows, where  $L_2$  is the measured noise level from the authorised development at the assessed wind speed with turbines running but without the addition of any tonal penalty—

$$L_1 = 10 \log \left[ 10^{L_2/10} - 10^{L_3/10} \right]$$

The measured noise level from the authorised development is re-calculated by adding the tonal penalty (if any) to the corrected noise level  $L_1$ .

SCHEDULE 2

Article 10

Streets subject to street works

| (1)<br>Area             | (2)<br>Street subject to street works                    |
|-------------------------|--|
| County of Denbighshire  | Unclassified public road shown as PR1 on the access plan |
|                         | Unclassified public road shown as PR2 on the access plan |
|                         | Unclassified public road shown as PR3 on the access plan |
|                         | Footpath FP 12   |
| County Borough of Conwy | Footpath FP 10   |
|                         | Footpath FP 15   |

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

| <i>(1)</i><br><i>Area</i>                          | <i>(2)</i><br><i>Street subject to street works</i>         |
|--|---|
| County of Denbighshire and County Borough<br>Conwy | Footpath FP 142   |
|  | Footpath FP 13  |
|  | Footpath FP 14  |
|  | Unclassified public road shown as PR5 on the<br>access plan |

## SCHEDULE 3

Article 11

Streets to be stopped up

**Streets for which a substitute is to be provided**

| <i>(1)</i><br><i>Area</i> | <i>(2)</i><br><i>Street to be stopped<br/>up</i> | <i>(3)</i><br><i>Extent of stopping up</i> | <i>(4)</i><br><i>New street to be<br/>substituted</i> |
|---------------------------|--|--|---|
| County<br>Denbighshire    | of Footpath FP 19                                | Between points P1 and<br>P2                | Footpath between<br>points P1, P3 and P4              |

## SCHEDULE 4

Article 14

Streets to be temporarily stopped up

| <i>(1)</i><br><i>Area</i>                          | <i>(2)</i><br><i>Street to be temporarily<br/>stopped up</i> | <i>(3)</i><br><i>Extent of temporary stopping<br/>up</i> |
|--|--|--|
| County of Denbighshire                             | Unclassified public road shown<br>as PR1 on the access plan  | Between points T1 and T2                                 |
|  | Unclassified public road shown<br>as PR2 on the access plan  | Between points T2 and T3                                 |
|  | Unclassified public road shown<br>as PR3 on the access plan  | Between points T4 and T5                                 |
|  | Footpath FP 12   | Between points T12 and T13                               |
| County Borough of Conwy                            | Footpath FP 10   | Between points T24 and T25                               |
|  | Footpath FP 15   | Between points T22 and T28                               |
| County of Denbighshire and<br>County Borough Conwy | Footpath FP 142  | Between points T8 and T9                                 |
|  | Footpath FP 13   | Between points T13 and T14                               |
|  | Footpath FP 14   | Between points T13, T15 and<br>T16                       |

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| <i>(1)</i><br>Area | <i>(2)</i><br>Street to be temporarily stopped up        | <i>(3)</i><br>Extent of temporary stopping up |
|--------------------|--|---|
|                    | Unclassified public road shown as PR5 on the access plan | Between points T6 and T7                      |

## SCHEDULE 5

Article 15

## Access to works

| <i>(1)</i><br>Area     | <i>(2)</i><br>Description of access                  |
|------------------------|--|
| County of Denbighshire | Unclassified Road north of Clocaenog Forest<br>B5105 |

## SCHEDULE 6

Articles 23(1) and 29

Land subject to acquisition of new rights and interference with private rights

## PART 1

## Land subject to acquisition of new rights

| <i>(1)</i><br>Number of land shown on land plan | <i>(2)</i><br>Purpose for which rights may be acquired |
|---|--|
| 9, 10, 11, 12, 13                               | Right to install cables in the public highway          |

## PART 2

## Land subject to interference with private rights

| <i>(1)</i><br>Number of land shown on land plan | <i>(2)</i><br>Rights to be interfered with  |
|---|---|
| 1   | Mineral rights  |
| 2, 3, 4, 5, 6, 7                                | Private rights of way   |
| 8   | Private rights of way, fishing and sporting rights and rights to water cattle, sheep, horses and other stock at reservoir |

## SCHEDULE 7

Article 23(4)

Modification of compensation and compulsory purchase enactments for creation of new rights

**Compensation enactments**

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2. (1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973<sup>(24)</sup> is to have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right is purchased from”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc proposed for compulsory acquisition) as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be substituted the words “right affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

**Application of the 1965 Act**

3. (1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land

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(24) 1973 c.26.



of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

“8. (1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
  - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Clocaenog Forest Wind Farm Order 2014 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of

service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

**8.** Section 20 of the 1965 Act (protection for interests of tenants at will, etc) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

**9.** Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

## SCHEDULE 8

Article 35

### Protection for electricity, gas, water and sewerage undertakers

**1.** For the protection of the utility undertakers referred to in this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned, have effect.

**2.** In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity utility undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989)<sup>(25)</sup>, belonging to or maintained by that utility undertaker;
- (b) in the case of a gas utility undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water utility undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage utility undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991<sup>(26)</sup>; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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<sup>(25)</sup> 1989 c.29.

<sup>(26)</sup> 1991 c.56.

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(27)</sup>;
- (c) a water utility undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage utility undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any apparatus otherwise than by agreement.

5. (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus may not be removed under this Schedule and any right of a utility undertaker to maintain that apparatus in that land may not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question shall, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(5) The utility undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work in

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(27) 1986 c.44.

connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6. (1) Where, in accordance with the provisions of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of the undertaker, the arbitrator shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7. (1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker shall submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted,

and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The undertaker may not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8. (1) Subject to the following provisions of this paragraph, the undertaker shall repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the—

- (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 reasonably incurred or compensation properly paid in connection with the acquisition of rights or exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus of works, the inspection, superintendence and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the undertaker of any power under this Order; and
- (d) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any such power,

within a reasonable time of being notified by the utility undertaker that it has incurred such expenses.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 37 (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 would be payable to the utility undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus may not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole 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 utility undertaker 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 utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**9.** (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided by the utility undertaker, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) 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 a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**10.** Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order grants development consent for, and authorises RWE Innogy UK Limited to construct, operate and maintain a wind electricity generating station (comprised of up to 32 wind turbine generators) in Clocaenog Forest, North Wales, together with all necessary and associated development.

For the purposes of the development that it authorises, RWE Innogy UK Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights.

The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 36 (certification of plans, etc) of this Order may be inspected free of charge at the offices of Denbighshire County Council, County Hall, Wynnstay Road, Ruthin, LL15 1YN, and Conwy County Borough Council, Bodlondeb, Conwy, LL32 8DU.

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**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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