

2026 No. 000

INFRASTRUCTURE PLANNING

Future Energy Llanwern Solar Farm Order 20..

Made - - - - ***

Coming into force ***

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by the Examining Authority 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(c).

The Examining Authority having considered the application together with the documents that accompanied it, and the representations made and not withdrawn has, in accordance with section [83 (1)][74(2)] of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, has considered the report and recommendations of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(d) and has had regard to the documents and matters referred to in section 105 (2) of the 2008 Act(e).

The Secretary of State, having decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the

(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of and Schedule 13 to the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264.

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) S.I. 2017/572.

(e) Section 105(c) was amended by paragraph 50 of Schedule 13 of the Localism Act 2011 (c. 20).

Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections [114, 115, 120 and 132 and Schedule 5] of the 2008 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the Future Energy Llanwern Solar Farm Order 20[] and comes into force on [] 202[].

Interpretation

2.—(1) In this Order except where provided otherwise—

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

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

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

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“the 1984 Act” means the Road Traffic Regulation Act 1984(e);

“the 1989 Act” means the Electricity Act 1989(f);

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

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

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

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales (of the 1991 Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets);

“archaeological management plan” means the document certified as the archaeological management plan for the purposes of this Order under article 39 (certification of plans and documents);

“authorised development” means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

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

“bank holiday” means a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(j);

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- (a) 1961 c. 33.
 - (b) 1965 c. 56
 - (c) 1980 c. 66
 - (d) 1981 c. 66.
 - (e) 1984 c. 27.
 - (f) 1989 c. 29.
 - (g) 1990 c. 8. / S.I. 2010/103
 - (h) 1991 c. 22.
 - (i) 2008 c. 29. / S.I. 2017/572
 - (j) 1971 c. 80.

“book of reference” means the document certified as such by the Secretary of State under article [40] for the purposes of this Order;

“cable” means up to [400kV] cables for the transmission of electricity and includes direct lay cables, cables laid in cable ducts or protective covers, and further includes fibre optic and other communications cables either within the cable or laid alongside;

“cable circuit” means an electrical conductor necessary to transmit electricity between two points within the authorised development and may include one or more auxiliary cables for the purpose of gathering monitoring data or general communications;

“cable crossings” means the crossing of existing cables, pipelines or other existing infrastructure by the cables authorised by this Order together with cable protection;

“cable ducts” means conduits for the installation of cables;

“cable protection” means measures to protect cables from physical damage including but not limited to concrete mattresses, with or without frond devices, and/or rock placement, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices and rock and gravel burial;

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

“CCTV” means a closed circuit television security system;

“commence” means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) comprised in or for the purpose of the authorised development other than site preparation works (except where stated to the contrary) and “commencement” and “commenced” and cognate expressions must be construed accordingly;

“commissioning” means the process of testing all systems and components of numbered work [1] in order to ensure that they, and the authorised development as a whole, function in accordance with plant design specifications and the undertaker’s operational and safety requirements;

“construction compound” means a compound including central offices, welfare facilities, accommodation facilities, storage and parking for construction of the authorised development and other associated facilities;

“date of final commissioning” means in respect of each phase of the authorised development as approved under requirement 3 of Schedule 2 (requirements) that contains part or all of numbered work 1, the date on which each such phase commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the document of that name which is certified by the Secretary of State as the environmental statement for the purposes of this Order under [table / article 40];

“National Grid substation” means the existing 400kV Whitson substation located at Broad St Common, Nash, Newport, NP18 2BA owned and operated by National Grid;

“flood consequence assessment” means the document of that name identified in the table at Schedule 7 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“grid connection works” means that part of the authorised development identified in work numbers 4 and 9 (to the extent work number 9 is to facilitate access to work number 4);

“hedgerow plan” means the plan identifying important hedgerows and certified by the Secretary of State for the purposes of this Order under article [39];

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

“inverter” means electrical equipment required to convert direct current power generated by the solar panels to alternating current power;

“joint bay” means an excavation formed to enable the jointing of cables;

“jointing” means a process by which two or more cables are connected to each other by means of cable joints withing a joint bay;

“land plan[s]” means sheets [] of the plans of that name certified by the Secretary of State as the land plan for the purpose of this Order under article [40];

“LEMP” means the landscape and ecological plan approved pursuant to requirement [];

“maintain” include inspect, upkeep, repair, adjust, alter, remove, refurbish, reconstruct, improve and replace any part in relation to the authorised development, provided such works do not give rise to any materially different environmental effects to those identified in the; and any derivative of “maintain” must be construed accordingly;

“mounting structure” means a frame or rack with posts made of galvanised steel or other material pushed into the ground to support the solar panels;

“National Grid” means National Grid Electricity Transmission PLC (company number 2366977) whose registered office is at 1 to 3 Strand, London WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

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

“Order limits” means the limits shown on the land plan within which the authorised development may be carried out and land acquired or used permanently or temporarily;

“outline CEMP” means the outline construction environmental management plan certified by the Secretary of State as the outline CEMP for the purposes of this Order in accordance with article 39;

“outline construction traffic management plan” means the document certified by the Secretary of State as the outline construction traffic management plan for the purposes of the Order in accordance with article 40;

“outline decommissioning plan” means the document certified as the outline decommissioning plan by the Secretary of State for the purposes of this Order under article 40;

“outline LEMP” means the document certified by the Secretary of State as the outline landscape and ecological management plan for the purposed of this Order in accordance with article 40;

“outline soil management plan” means the document certified by the Secretary of State as the outline soil management plan for the purpose of this Order in accordance with article 40;

“proposed diversion of public footpaths” means the plan showing footpaths 040/5/1 and 404/5/1 and the proposed diversion certified by the Secretary of State for the purpose of this Order under article 40;

“relevant planning authority” means the planning authority for Newport City Council or Monmouthshire County Council;

“requirement” means those matters set out in Part 1 Schedule 2 (requirements) and a reference to a numbered requirement is a reference to the requirements set out in the paragraph of that Part of that Schedule with the same number;

“site preparation works” means operations consisting of pre-construction surveys and/or monitoring, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in

(a) “highway” is defined in section 328 (1) for “highway authority” see section 1.

respect of adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements;

“solar panel” means a solar photovoltaic panel designed to convert solar irradiance to direct current electrical energy fitted to a mounting structure;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151(1) of the Communications Act 2003(a);

“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 (b);

“substation” means a compound containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation with welfare facilities, means of access and other associated facilities;

“transformer” means a structure serving to transform electricity generated by the solar panels to a higher voltage;

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

“undertaker” means Future Energy Llanwern Limited company number 11578319 whose registered office is at Hailstone House, Hailstone, Nr Cricklade, Wiltshire, United Kingdom, SN6 6JP

“watercourse” includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

“work” means a work set out in Schedule 1 (authorised development); and

“works plan” means the plan certified by the Secretary of State as the works plan for the purposes of this Order in accordance with article 40 (certificate of plans, etc).

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

(3) All distances, directions, capacities and lengths referred to in this order are approximate and distances between line or points on a numbered work comprised in the authorised development and shown on [the works, plans and street access and rights of way plans and traffic regulation measures plans] are taken to be measure along that work.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) In this Order “includes” is to be construed without limitation unless the contrary intention appears.

(6) References in this Order to any statutory body include that body’s successor bodies as from time to time have jurisdiction in relation to the authorised development.

(7) All areas described in square metres in the book of reference are approximate.

(a) 2003 c. 21.

(b) "street authority" is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

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

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plan.

(3) Notwithstanding anything in this Order or shown on the works plan the undertaker may construct either work no. 3A or work no. 3B but for the avoidance of doubt may not construct both of work no. 3A and work no. 3B under the powers conferred by this Order.

(4) The undertaker must notify the relevant planning authority prior to the commencement of any works comprised in work no. 3A or work no. 3B which of those works it intends to construct.

Operation of generating station

4.—(1) The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of the authorised development.

Power to maintain the authorised development

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

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

(3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

Planning Permission

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

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

the carrying out of such development, under the terms of the planning permission does not breach the terms of this Order.

Benefit of the Order

7.—(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker save in relation to the [Whitson Substation works] in relation to which the provisions of this Order have effect for the benefit of the undertaker (a)

Consent to transfer the benefit of the Order

8.—(1) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

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

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (8), are to include references to the transferee or lessee.

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

- (a) the transferee or lessee is National Grid;
- (b) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply, etc.) of the 1989 Act or
- (c) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in full and final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by the upper tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State and the relevant planning authority in writing before transferring or granting a benefit referred to in paragraph (1).

(5) The notification referred to in paragraph (4) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (6), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of 14 working days from the date of the receipt of the notification.

(7) The notification given must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notification.

(a) 2003 c. 21. Certified copy from legislation.gov.uk Publishing 26 and NGET and Work No. 6(k) in relation to which the provisions of this Order have effect for the benefit of the undertaker and UK Power Networks Limited.

(8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

- (a) the benefit transferred or granted (“the transferred benefit”) must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Disapplication, application and modification of legislative provisions

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

- (a) regulation 6 of the Hedgerows Regulation 1997^(a) is modified so as to read for the purposes of this Order only as if there were inserted paragraph (1)(j) the following—
 - “(k) or for carrying out or the maintenance of development which has been authorised by the Future Energy Llanwern Solar Farm Order 202[]”
- (b) section 23 (prohibition of obstructions, etc in watercourses) of the Land Drainage Act 1991^(b);
- (c) section 32(b) (variation of awards) of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made under section 66(a) (powers to make byelaws) of the Land Drainage Act 1991;
- (e) section 118 (consent request for discharge of trade effluent into public sewer) of the Water Industry Act 1991;
- (f) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016^(c);
- (g) the legislation listed in Schedule 3 (legislation to be disapplied) insofar as the provisions still in force are incompatible with the powers contained within this Order; and
- (h) the provisions of the Neighbourhood Planning Act 2017^(d) insofar as they relate to the temporary possession of land under [articles 27 temporary use of land for constructing the authorised development and 28 temporary use of land for maintaining authorised development] of this Order.

(2) Any development or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether expressed or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of Sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act^(e).

(3) For the purpose of section 9 (requirement of licence for felling) of the Forestry Act 1967^(f) any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction of the authorised development is deemed to be immediately

(a) S.I. 1997/1160.

(b) 1991 c. 59

(c) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110

(d) 2017 c. 20.

(e) Sections 160 and 161 were amended by S.I. 2015/664. Section 161 was also amended by section 112(2) of and paragraph 4 of Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c. 23).

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

required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(4) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of “development”) of the Community Infrastructure Levy Regulations 2010(a) any building comprised in the authorised development is deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

Defence to proceedings in respect of statutory nuisance

10.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990(b) 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 is to be made, and no fine is to be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance or decommissioning of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(c); or
 - (ii) is a consequence of the construction maintenance or decommissioning of the authorised development and cannot reasonably be avoided; or
- (b) the nuisance is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised development.

PART 3 STREETS

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus under the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and it; and

(a) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

(b) 1990 c. 43.

(c) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995. There are other amendments to the 1974 Act which are not relevant to the Order.

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

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

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out until paragraph (1).

Power to alter layout, etc., of streets

12.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street—

- (a) in the case of the streets specified in column 2 of the table in Part 1 (permanent alteration of layout and maintained by the highway authority) and Part 2 (permanent alteration of layout and maintained by the street authority) of Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and
- (b) in the case of the streets as specified in column 2 of the table in Part 3 (temporary alteration of layout) of Schedule 5 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any streets and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places; and
- (c) alter, remove, replace and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

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

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Construction and maintenance of altered streets

13.—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout and maintained by the highway authority) of Schedule 5 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority.

(2) The permanent alterations to each of the streets specified in Part 2 (permanent alteration of layout and maintained by the street authority) of Schedule 5 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(3) Subject to paragraph (4) the temporary alterations to each of the streets specified in Part 3 (temporary alteration of land) of Schedule 5 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(4) Those restoration works carried out pursuant to article 9(3) (power to alter layout, ect., of the streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(5) 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 is 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 traffic.

(6) For the purposes of a defence under paragraph (5), a court must in particular have regard to the following matters—

- (a) the character of the street including 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 reasonable 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; and
- (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 have been displayed,

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

(7) Paragraphs (2) to (6) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary closure of public rights of way

14.—(1) The undertaker, during and for the purpose of constructing and maintaining the authorised development, may temporarily close, prohibit the use of, restrict the use of, authorise the use of, alter or divert any public right of way [street] and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way;
- (b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and
- (c) subject to paragraph (2), prevent all persons from passing along the public right of way.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

- (a) the public rights of way specified in column 2 of the table in Part 1 (public rights of way to be temporarily closed and diverted) of Schedule 4 (public rights of way) to the extent specified in column 3 of that table;
- (b) the public rights of way specified in column 2 of the table in Part 2 (permanent use of motor vehicles on public right of way) of Schedule 4 (public rights of way) to the extent specified in column 3 of that table; and

(c) the public rights of way specified in column 2 of the table in Part 3 (temporary management of public rights of way) of Schedule 4 (public rights of way) to the extent specified in column 3 of that table.

(4) The undertaker must not temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

- (a) any public right of way specified in paragraph (3) without first consulting the street authority; and
- (b) any other public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

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

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any public right of way which has been temporarily closed under the powers conferred by this article and within the Order limits as a temporary working site.

(7) In this article expressions used in this article and in the 1984 Act have the same meaning.

Nothing in this article prevents the undertaker from temporarily closing, prohibiting the use of, authorising the use of, restricting the use of, altering or diverting a public right of way under this article more than once.

Access to works

15.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 (permanent means of access to works) of Schedule 7 (access to works);
- (b) form and lay out the temporary means of access in the location specified in Part 2 (temporary means of access) of Schedule 7; and
- (c) with the prior approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The undertaker must restore any access that has been temporarily created under this Order to the reasonable satisfaction of the street authority.

Permanent stopping up and restriction of use of streets, public rights of way and private means of access

16.—(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 public rights of way specified in column (1) of Parts 1, 2, and 3 of Schedule 4 (permanent diversion of public rights of way) to the extent specified and described in column (2) of that Schedule.

(2) No public right of way specified in column (1) of Parts 1, 2 and 3 of Schedule 4 is to be wholly or partly stopped up under this article unless— (a) the new public right of way to be constructed and substituted for it, which is specified in column (3) of those Parts 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 public right of way 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 public right of way until the completion and opening of the new public right of way in accordance with sub[1]paragraph (a).

(3) Where a public right of way has been stopped up under this article— (a) all rights of way over or along the public right of way so stopped up are extinguished; and (b) the undertaker may

appropriate and use for the purposes of the authorised development so much of the site of the public right of way as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment 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.

(5) This article is subject to article 33 (apparatus and rights of statutory undertakers in closed streets).

Agreements with street authorities

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

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any closure, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (c) the undertaking in the street of any of the works referred to in article 9 (street works) and article 11(1) (construction and maintenance of altered streets); or
- (d) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing public maintainable highway; or
 - (ii) which the undertaker and highway authority agree to be adopted as public maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the 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) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

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

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

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
- (c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;
- (d) permitting, prohibiting or restricting the use by vehicular traffic or non vehicular traffic of any road; and
- (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act

(a) S.I. 2016/362.

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

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

- (a) consult with the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority.

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

- (a) given not less than 4 weeks' notice in writing of its intention so to do the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspaper circulating in the area in which any road to which the provision relates is situated.

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

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

- (a) must be made by written instrument in such form as the undertaker considers appropriate;
- (b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and
- (c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(b) (road traffic contraventions subject to civil enforcement).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

19.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipers 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 under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(c).

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

(4) The undertaker must not carry out any works to or 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 must not be unreasonably withheld; and

(a) S.I. 2011/935

(b) 1974 c. 40. Section 61(9) was amended by Section 162 and paragraph 15 of Schedule 3 to the Environment Protection Act 1990 (c. 25). There are other amendments to 1974 Act which are not relevant to this Order.

(c) 1991 c. 56. section 106 was amended by section 35(8)(a) of the Competition and Services (Utilities) Act 1992 (c. 43) and sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to the section which are not relevant to this Order.

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

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works in, under, over or within eight metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of Natural Resources Wales.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2016(a).

(8) In this article—

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

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

(9) If a person who receives an application for 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 for consent, that person is deemed to have granted consent or given approval, as the case may be’

Authority to survey and investigate the land

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

(a) survey or investigate the land;

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

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

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

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

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

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

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

(4) No trial holes may be made under this article—

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

(b) in a private street without the consent of the street authority;
but such consent must not be unreasonably withheld.

(a) S.I. 2016/1154 “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by the reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of the highway authority; or
- (b) under paragraph (4)(b) in the case of the street authority.

the authority is deemed to have granted consent.

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

Protective works to buildings

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

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning.

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 39 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the date of final commissioning it appears protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development, the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

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

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

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

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to article 22 (time limit for the exercise of authority to acquire land compulsorily), article 2012) (compulsory acquisition of rights), article 26 (acquisition of subsoil only), article 26 (rights under or over streets), article 30 (temporary use of land for constructing the authorised development) and schedule 10 (protective provisions).

Time limit for exercise of authority to acquire land compulsorily

23.—(1) After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 22 (application of the 1981 Act).

(2) The authority conferred by article 30 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and imposition of restrictive covenants

24.—(1) Subject to paragraph (2) and article 30 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily such rights over the Order land

or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 24 (private rights) and article 32 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 9 (land in which only new rights etc. may be acquired), the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 6 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

Private rights

25.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition or the imposition of restrictive covenants under article 21 are extinguished—

- (a) from the date of acquisition of land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 20 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or imposition of the restrictive covenants by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right.

whichever is the earliest.

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

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

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights; and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 29 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

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

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

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

(iv) the undertaker's taking temporary possession of the land, that any or all of those paragraphs do not apply to any right specified in the notice; or

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

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

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

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

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

(8) References in this article to private rights over land include any right of way, trust, incident, restrictive covenant, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support, and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

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

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

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

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

(4) Omit section 5(2) (earliest date for execution of declaration).

(5) Omit section 5A (time limit for general vesting declaration)(a).

(6) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Future Energy Llanwern Solar Farm Order [xxxx]”.

(7) In section 6 (notices after extension of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

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

(9) In paragraph A1 (counter notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 26(3) (acquisition of subsoil only) of the Future Energy Llanwern Solar Farm Order 202[], which excludes the acquisition of subsoil only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

- (a) Schedule 6A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by Schedule 10 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants);
- (b) Schedule 6A (counter notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest, material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Power to override easements and other rights

28.—(1) Any authorised activity which take places on land within the Order land (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

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

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

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land within the Order land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker or any contractors, servants or agents of the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability

the liability is enforceable against the undertaker.

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

Modification of Part 1 of the Compulsory Purchase Act 1965

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

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Future Energy Llanwern Solar Farm Order [xxxx].

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

- (a) in subsection (1)(a), after "land" insert "under that provision"; and
- (b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 19 (time limit for exercise of authority to acquire land compulsorily) of the Future Energy Llanwern Solar Farm Order [xxxx]".

Rights under or over streets

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

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

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

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

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

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

Temporary use of land for constructing the authorised development

31.—(1) The undertaker may, in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in column (1) of the table in Schedule 11 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that table; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any agricultural plant and apparatus, fences, debris and vegetation from that land;
- (c) construct temporary works, haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
- (e) construct any works on that land as are mentioned in Schedule 1 (authorised development); and
- (f) carry out mitigation works required under the requirements in Schedule 2 (requirements).

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

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

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

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

- (a) in the case of the land referred to in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

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

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvement carried out under this article to any street specified in Schedule 3 (streets subject to street works); or

(d) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2 (requirements).

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

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

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

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

(10) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph 27(1)(a)(i) under this Order.

(11) Nothing in this article precludes the undertaker from—

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 9 (land in which only new rights etc. may be required); or

(b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 23 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 26 (rights under or over the streets).

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

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

Temporary use of land for maintaining the authorised development

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

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

(b) enter on any land within the Order land for the purpose of gaining such access is reasonably required for the purpose of maintaining the authorised development; and

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

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

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

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

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

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

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

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

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

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

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

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

(11) In this article "the maintenance period" means the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article.

Statutory undertakers

- 33.—**(1) Subject to the provisions of Schedule 15 (protective provisions) the undertaker may—
- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land; and
 - (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over to within the Order land.

Apparatus and rights of statutory undertakers in closed streets

34. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 11 (street works), article 12 (power to alter layout, ect. of streets), article 10 (construction and maintenance of altered streets) or article 14 (temporary closure of public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 10 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

35.—(1) Where any apparatus of public utility undertaker or of a public communications provider is removed under article 32 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 32 (statutory undertakers), any person who is—

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

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

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

(4) In this article—

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

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

Funding

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

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 21 (compulsory acquisition of land);
- (b) article 23 (compulsory acquisition of rights);
- (c) article 22 (private rights);
- (d) article 26 (acquisition of subsoil only);
- (e) article 29 (rights under or over streets)
- (f) article 30 (temporary use of land for carrying out the authorised development);
- (g) article 31 (temporary use of land for maintaining the authorised development);
- (h) article 33 (statutory undertakers); and
- (i) article 34 (recovery of costs of new connections).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such form as to be capable of enforcement by such a person.

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

PART 6

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

37.—(1) This article applies to—

(a) 2003 c. 21.

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

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

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

(3) 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 part to the lease of any obligation of any other party under the lease.

Removal of human remains

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

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

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place within or near the Order limits.

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

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

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

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

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

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

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

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains within the Order limits; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days 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; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose, and, so far as possible, remains from individual graves are to be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but 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.

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

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the local authority mentioned in paragraph (3).

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

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

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

- (a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
- (b) is, or is a child of, a brother, sister, uncle or aunt of the deceased; or
- (c) is the lawful executor of the estate of the deceased; or
- (d) is the lawful administrator of the estate of the deceased.

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

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

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

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

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

(b) S.I. 1950/792.

Operational land for the purposes of the 1990 Act

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

Certification of plans and documents

40.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all of the documents listed in Schedule [xx] (Documents to be certified) for certification that they are true copies of the document referred to in this Order.

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

Services of notices

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

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

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

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

(a) 1978 c. 30.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven 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 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 take effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

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

(10) In this article “legible in all material aspects” 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.

Felling or lopping of trees or removal of hedgerows

42.—(1) Subject to paragraph (2) and article 37 (trees subject to tree preservation orders) the undertaker may fell or lop any tree, or shrub near any part of the authorised development, or cut back its roots, within or encroaching upon land within the Order limits if it reasonably believes it to be necessary to do so to prevent the tree, or shrub—

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

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

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be deemed under Part 1 of the 1961 Act.

(4) The undertaker may for the purposes of the authorised development and subject to paragraph (2) remove the hedgerows specified in column 2 of the table in Schedule 8 (hedgerows to be removed) for the purpose specified in relation to the relevant hedgerow in column 3 of that table.

(5) The undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article “hedgerow” [and “important hedgerow”] have the same meaning as in the Hedgerow Regulations 1997(a).

Trees subject to tree preservation Orders

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

(2) In carrying out the activity authorised by paragraph (1)—

(a) S.I. 1997/1160.

- (a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

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

Arbitration

44.—(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 9 (Arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice by the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provisions of this Order shall not be subject to arbitration.

Procedure in relation to certain approvals etc.

45.—(1) Where an application is made to or request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 16 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 16 (procedure for discharge of requirements) and where stated to the contrary if, within eight weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

(6) Schedule 16 (procedure for discharge or requirements) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 15 (protective provisions) or any dispute under article 16(6) (protective works to buildings) to which paragraph (4) applies.

(7) In this article "consenting authority" means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 15 (protective provisions).

Guarantees in respect of payment of compensation

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

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

(2) The provisions are—

- (a) article 21 (compulsory acquisition of land);
- (b) article 23 (compulsory acquisition of rights);
- (c) article 24 (private rights);
- (d) article 2[] (acquisition of subsoil only);
- (e) article 26 (rights under or over streets);
- (f) article 27 (temporary use of land for constructing the authorised development);
- (g) article 28 (temporary use of land for maintaining the authorised development); and
- (h) article 29 (statutory undertakers).

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

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

Compulsory acquisition of land – incorporation of the mineral code

47. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated into this order subject to the modifications that—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for “the undertaker” substitute “authorised development”; and
- (c) paragraph 8(3) is not incorporated.

No double recovery

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

Protective Provisions

49. Schedule [x] (protective provisions) has effect

Signed by authority of the Secretary of State for Energy Security and Net Zero

David Wagstaff
Director Energy Infrastructure Planning
Department for Energy Security and Net Zero

(a) 1981 c. 67.

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

Interpretation

1. In this Schedule—

“balance of solar system (BoSS)” means inverters, transformers and switch gear and would be either—

- (a) solar stations being a station comprising centralised inverters, transformers and switch gear with each component for each solar station either—
 - (i) a “solar station” located outside, with a concrete foundation slab or placed on metal skids for each of the inverters and transformers and switch gear; or
 - (ii) housed together within a container sitting on a concrete foundation slab or placed on metal skids; or
 - (iii) string inverters attached either to mounting structures or a ground mounted frame, switchgear and transformers on a concrete foundation slab or placed on metal skids;

“electrical cables” means—

- (a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables; and
- (b) excavations to install trenching, including storage of excavated material;
- (c) provision of ducting or alternative means of conducting media including jointing pits, hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protections, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

“north compound 1” means a fenced and gravelled area containing two switchrooms;

“north compound 2” means a fenced and gravelled area containing a 132 kV transformer;

“north compound 3” means a fenced and gravelled area containing a 132 kV transformer

“point of connection 1” means the area within the National Grid Substation providing a 33kV connection to enable the onward transmission of electricity;

“point of connection 2” means the area within the National Grid Substation providing a 132 kV point of connection to enable the onward transmission of electricity;

“south compound” means a fenced and gravelled area containing either south transformer 1 or south transformers 1,2 and 3;

“south transformer 1” means a 132kV transformer and associated equipment;

“south transformer 2” means a 132kV transformer and associated equipment;

“south transformer 3” means a 132kV transformer and associated equipment;

“switch gear” means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment;

“switchroom 1” means one 33kV switchroom housing electrical equipment to enable the onward transmission of electricity;

“switchroom 2” means one 33kV housing electrical equipment to enable the onward transmission of electricity; and [KE note – see Byers Gill]

“tee connections” means two tee connections to enable the transmission of electricity from point of connection 1 and point of connection 2 to the [base of] the existing overhead line tower

Authorised development

2. In the county borough of Monmouthshire and the City of Newport, the construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.

3. The nationally significant infrastructure project comprises one generating station with a gross electrical output capacity of over 350 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 350 megawatts including—

- (a) solar panels fitted to mounting structures; and
- (b) balance of solar system (BoSS) plant;

and associated development within the meaning of Section 115(2) of the 2008 Act including—

Work No. 2— construction of north compound 1, switchroom 1 and point of connection 1 [including (but not limited to) cabling, cable sealing ends, circuit breakers, surge arrestors, disconnectors, transformers, bushbars and bushbar clamp measuring equipment, relay marshalling rooms and electrical earthing works, construction of access roads to provide operational and maintenance access]; and one of either—

- (a) Work No. 2A – comprising
 - (i) switchroom 2;
 - (ii) point of connection 2;
 - (iii) north compound 2;
 - (iv) tee connections
- (b) Work No.2B comprising
 - (i) point of connection 2;
 - (ii) north compound 2; and
 - (iii) north compound 3
- (c) Work No. 2C – comprising
 - (i) Point of connection 2;
 - (ii) South compound comprising south transformers 1, 2 and 3
- (d) Work No.2D –comprising
 - (i) tee connections.

Work No. 3— either—

- (a) Work No.3A – to lay 33kv electrical cables outside of panel areas connecting Work No.1 with either Work No.2A or Work No.2D whichever is constructed; or
- (b) Work No. 3B – construction of South Compound and work to lay three electrical 132 kV cables from South Compound to either Work No.2B or Work No.2C whichever is constructed.

[Work No. [to be discussed with National Grid]—within the National Grid substation construction of electrical substation infrastructure including:

- (a) A Compound for electrical work necessary for the onwards transmission of electricity containing, but not limited to, cable switchgear and electrical equipment including [power transformers, reactive compensation equipment, filters, cooling equipment, control] lightning rods, internal roads, security fencing, and other associated equipment, structures and buildings including noise-attenuation works;
- (b) electrical cables;
- (c) [tee offs];
- (d) Point of connection 1;
- (e) Point of connection 2 where Work No.2B, 2C or 2D is being constructed;
- (f) 132 kV connection bay locate at the including all associated electrical equipment and civil works necessary to enable the onward transmission of electricity; and
- (g) access gates and tracks]

Work No. 4—areas of habitat management comprising—

- (a) planting and ecological works incorporating the biodiversity objectives and management prescriptions set out in the LEMP;
- (b) internal access tracks;
- (c) temporary diversion of public footpath;
- (d) underground connection of the electricity network;
- (e) cable trenches;
- (f) formation of hedge buffer zone;
- (g) CCTV and mountings; and
- (h) Reen crossings

Work No. 5 – cables including but not limited to electrical cables connecting Work No. 1 and Work No. 3 [not yet shown on Work Plan]

Work No. 6 works to provide operational access from the public highway to Work Nos. [1-4] and any associated development comprising—

- (a) creation of accesses from the public highway;
- (b) creation of visibility splays;
- (c) works to alter the layout if any street or highway;
- (d) laying out, widening and surfacing of access tracks;
- (e) creation and maintenance of passing bays; and
- (f) vegetation removal;

Work No. 7—HDD crossing beneath the pipeline owned by Tata Steel Uk Limited.

Work No. 8— temporary construction and decommissioning compound comprising—

- (a) installation of portable cabins providing office and welfare facilities;
- (b) parking;
- (c) site and welfare offices, canteens and workshops;
- (d) storage containers;
- (e) secure storage compound to store materials and equipment;
- (f) areas of hardstanding;
- (g) site drainage and waste management infrastructure (including sewerage);
- (h) electricity, water and telecommunications connections; and

internal security fencing with gates.

Site Wide Works

4. In connection with and in addition to Work Nos. 1-9 above and to the extent that they do not form any part of such work, further associated development comprising such other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development and which are within the Order limits and fall within the scope of work assessed by the environmental statement within the Order limits including—

- (a) foundations, drainage, fencing, culverts and lighting;
- (b) [works to the existing irrigation system and works to alter the position and extent of such irrigation system];
- (c) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- (d) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the position of, such services and utilities connections;
- (e) bunds, embankments, trenching and swales;
- (f) jointing bays, cable ducts, cable protection, joint protection, manholes, construction of crossing structures, kiosks, marker, posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying;
- (g) site preparation works, site clearance (including vegetation removal, demolition of existing structures); earthworks (including soil stripping and storage, site levelling); remediation of contamination, excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (h) working sites, storage areas, temporary vehicle parking, ramps and other means of access;
- (i) works to maintain and repair streets and access roads;
- (j) tunnelling, boring and drilling works;
- (k) boundary treatments, including means of enclosure;
- (l) hardstanding, internal roads and tracks, laydown areas, welfare facilities, construction;
- (m) landscape and biodiversity mitigation and enhancement;
- (n) horizontal directional drilling; and
- (o) works for the benefit or protection of land affected by the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 2

PART 1 REQUIREMENTS

[TBC]

SCHEDULE 3

Article 11

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule—

(1) Area	(2) Street	(3) Description of the street works
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SCHEDULE 4

Article [14]

PUBLIC FOOTPATH TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

SCHEDULE 5

Article 23

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

“access rights” means rights over land to—

- (a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays and road widening and to remove impediments (including vegetation) to such access; and

- (b) pass and re-pass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with the authorised development;

“cable rights” means rights over land to—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;
- (b) remain, pass and re-pass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and
- (c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

“substation connection rights” means rights over land to—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cables and services to the National Grid substation;
- (b) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;
- (c) remain, pass and re-pass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the National Grid substation works;
- (d) restrict and remove the erection of building or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and
- (e) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures.

<i>(1)</i>	<i>(2)</i>
<i>Plot reference number shown on the Land Plans</i>	<i>Purposes for which rights over land may be required and restrictive covenants imposed</i>

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR THE CREATION OF NEW
RIGHTS AND IMPOSITION OF NEW RESTRICTIVE
COVENANTS**

Compensation enactments

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

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973^(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for the words “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased or imposed”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation to the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuant of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the Future Energy Llanwern Solar Farm Order 202[]);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the Future Energy Llanwern Solar Farm Order 202[]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land

the authority is deemed for the purpose of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 21 (compulsory acquisition of land) and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965), applies to the compulsory acquisition of a right by the creation of a new right under article 23 (compulsory acquisition of rights—

- (a) with the modifications specified in paragraph 5; and

(a) 1973 c. 26.

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regards must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special act.”

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

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

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

(5) Section 11(a) (powers of entry) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 18 (compulsory acquisition of land)), it has the power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
 - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstance corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act (counter notice requiring purchase of land not in notice to treat) substitute—

SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

1.—(1) This schedule where an acquiring authority serves as notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building a factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 25 (application of the 1981 Act) of the Future Energy Llanwern Solar Farm Order 202[] in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (acquisition of subsoil only) of the Future Energy Llanwern Solar Farm Order 202[] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” included any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat is served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter notice’ or
- (c) refer the counter notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of the period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory; cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determined that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the land.

14.—(1) If the Upper Tribunal determined that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph, they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is determined by the Upper Tribunal.”.

SCHEDULE 7

Article 40

DOCUMENTS AND PLANS TO BE CERTIFIED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Document Name</i>	<i>Document Reference</i>	<i>Revision Number</i>	<i>Date</i>

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is to be set out in sub-paragraphs (2) to (4) unless amended in accordance with sub-paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the Claimant must provide both the Respondent and the arbitrator with—

- (a) a written Statement of Claim which describes the nature of the differences between the parties, the legal and factual issues, the Claimant's contentions as to those issues, the amount of its claim and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the Claimant's statements under sub-paragraph (2) by the arbitrator and Respondent, the Respondent must provide the Claimant and the arbitrator with—

- (a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the differences, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the claimant) and explanations for the objections.

(4) Within 7 days of the Respondent serving its statements under sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—

- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
- (e) written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. No single pleading is to exceed 30 single sided A4 pages using 10pt Arial font.

(2) The arbitrator must make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either part may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that he/she is to hold a hearing, the date and venue for the hearing must be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which he/she considers a fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision will be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(7) There will be no process of examination and cross-examination of experts, but the arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 28 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator will take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document and may make a decision on the submitted information attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(11) The arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, including the non-mandatory sections, save where modified by these arbitration rules in this Schedule.

(2) There will be no discovery or disclosure, except that the arbitrator will have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales and/or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The cost of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected/interrelated issues, the arbitrator will consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties will bear them of in what proportion they will be borne by the parties.

(4) The arbitrator will award recoverable costs on the general principle that each party should bear its own costs, having regards to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) The parties agree that any hearings held as part of the arbitration will take place in private.

(2) The parties and arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 10

Article 47

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

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

2. In this Part of this Schedule—

“affected undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;
- (b) a gas transporter within the meaning of part 1 (gas supply) of the Gas Act 1986(a);
- (c) a water undertaker within the meaning of the Water Industry Act 1991(b); or
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

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

(b) 1991 c. 56.

for the area of the authorised development [but, for the avoidance of doubt, does not include the undertaker specified in Part 2 (xx)] and Part 4 (xx) of this Schedule], and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electrical lines or electric plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purpose of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties, and

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

Precedence of the 1991 Act in respect of apparatus in the streets

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (water supply) of the 1991 Act.

Removal of apparatus

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

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours

to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 17 (arbitration).

(4) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 17 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (1) or (2), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 17 (arbitration).

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

Retained apparatus

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 4(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 4(1), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

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

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

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

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

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

Expenses and costs

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(1).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at the 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 17 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

8.—(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 4(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by an affected undertaker, the undertaker must—

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

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

Enactments and agreements

9. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF WELSH WATER

PART 3

FOR PROTECTION FOR OPERATORS OF ELECTRICAL COMMUNICATIONS CODE NETWORKS

10. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

11. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“the code rights” has the same meaning as in the Paragraph 3 of the electronic communications code(b);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

(a) 2003 c. 21.

(b) See section 106 of the 2003 Act. Section 106 was amended by section 4(3) of the Digital Economy Act 2017 (c. 30).

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

12. The exercise of the powers conferred by this Order is subject to part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

13.—(1) Subject to sub-paragraphs (2) to (3), if as a result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by the operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

14. The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

15. Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 17 (arbitration).

16. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

17. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Future Energy Llanwern Limited to construct a new solar power generating station on land within the administrative boundaries of Newport City Council and Monmouthshire County Council and to carry out all associated works.

The Order also makes provision for the maintenance operation and decommissioning of the authorised development.

A copy of the plans, the environmental statement and other documents mentioned in this Order and certified in accordance with article 40 of this Order (documents and plans to be certified) may be inspected free of charge during workings hours.

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